



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

सोमवार, 08 फरवरी, 2021 / 19 माघ, 1942

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dharamshala, the 03rd December, 2019

No. Shram(A) 6-2/2014 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court

Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	47/17	Bhim Sen	Secy. M/s Dholpur Krishi Sewa	02-09-2019
2.	889/16	Suta Ram	E.E.HPPWD, Nurpur & other	02-09-2019
3.	880/16	Amar Singh	E.E.HPPWD, Nurpur & other	03-09-2019
4.	771/16	Nasib Singh	E.E.HPPWD, Nurpur & other	03-09-2019
5.	26/18	Jotu Ram	M/s Sahoo Hydro Power Project	05-09-2019
6.	31/18	Aaso Ram	M/s Sahoo Hydro Power Project	05-09-2019
7.	24/18	Kishori Lal	M/s Sahoo Hydro Power Project	05-09-2019
8.	29/18	Gianu	M/s Sahoo Hydro Power Project	05-09-2019
9.	30/18	Karmo	M/s Sahoo Hydro Power Project	05-09-2019
10.	28/18	Sato Ram	M/s Sahoo Hydro Power Project	05-09-2019
11.	32/18	Angrejo	M/s Sahoo Hydro Power Project	05-09-2019
12.	27/18	Chhang Ram	M/s Sahoo Hydro Power Project	05-09-2019
13.	35/18	Rasilu	M/s Sahoo Hydro Power Project	05-09-2019
14.	25/18	Man Singh	M/s Sahoo Hydro Power Project	06-09-2019
15.	221/16	Hari Singh	E.E. HPPWD, Division Killar	06-09-2019
16.	631/16	Sato Devi	-do-	06-09-2019
17.	51/17	Devi Chand	-do-	06-09-2019
18	332/15	Soni Ram	-do-	06-09-2019
19.	417/15	Chandro Devi	-do-	06-09-2019
20.	428/16	Anita Kumari	-do-	06-09-2019
21.	375/16	Neel Dei	-do-	06-09-2019
22.	485/16	Ved Viyas	-do-	06-09-2019
23.	297/16	Dev Singh	-do-	06-09-2019
24.	448/16	Jeet Singh	-do-	06-09-2019

25.	242/16	Khem Raj	-do-	06-09-2019
26.	196/15	Girdhari Lal	E.E. I&PH Mandi	09-09-2019
27.	336/14	Shyam Lal	Secy. Bilaspur Distt. Co-opt. Federation	11-09-2019
28.	349/14	Arun Kumar	Secy. Bilaspur Distt. Co-opt. Federation	11-09-2019
29.	348/14	Kamal Kumar	Secy. Bilaspur Distt. Co-opt. Federation	11-09-2019
30.	202/17	Baljeet Singh	M.D., M/s Hotel Centre Point	14-09-2019
31.	648/16	Bhari Devi	Employer, M/S Baijnath Tea Estate Co.	14-09-2019
32.	650/16	Sandhi Devi	-do-	14-09-2019
33.	647/16	Pawna Devi	-do-	14-09-2019
34.	649/16	Feek Devi	-do-	14-09-2019
35.	229/14	Gen.Secy. Baijnath	-do-	14-09-2019
36.	15/18	Lekh Raj	E.E. HPPWD, Jawali	16-09-2019
37.	13/18	Shyam Lal	E.E. HPPWD, Jawali	16-09-2019
38.	389/15	Reeta Sharma	Principal Govt.Sr.Sec. Sch.Soldha	17-09-2019
39.	24/19	Onkar Singh	M/s Divya Himachal Prakashan	23-09-2019
40.	25/19	Lekh Raj	M/s Divya Himachal Prakashan	23-09-2019
41.	714/16	Rajiv Goswami	M/s Jagran Prakashan Ltd.	23-09-2019
42.	272/16	Vikas	Incharge Regional Mountaineering	23-09-2019
43.	16/18	Dharam Chand	E.E. HPPWD, Jawali	23-09-2019
44.	07/18	Bir Singh	E.E. HPPWD, Jawali	23-09-2019
45.	200/17	Balvinder Singh	M.D. M/s Sunshine Hydro Ltd., Nali.	23-09-2019
46.	355/16	Jai Chand	The D.F.O. Suket	26-09-2019

By order,

NISHA SINGH, IAS
Addl. Chief Secretary (Lab. & Emp.).

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR
COURT- CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 47/2017

Date of Institution : 24.01.2017

Date of decision : 02.9.2018

Shri Bhim Sen s/o Shri Mulk Raj, r/o V.P.O. Tatwali, Tehsil Fatehpur, District Kangra, H.P. through his legal representatives:

(i) Smt. Shashi Kanta (wife)

(ii) Shri Amit Kumar (son)

..Petitioners.

Versus

The Secretary, M/s the Dholpur Krishi Sewa Sahkari Sabha Managing Committee, P.O. Tatwali, Tehsil Fatehpur, District Kangra, H.P. *..Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajat Chaudhary, Adv.

For the Respondent : Respondent already *ex parte*

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Bhim Sen s/o Shri Mulk Raj, r/o V.P.O. Tatwali, Tehsil Fatehpur, District Kangra, H.P. *w.e.f.* 30-09-2015 by the Secretary, M/s the Dholpur Krishi Sewa Sahkari Sabha Managing Committee, P.O. Tatwali, Tehsil Fatehpur, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/managing committee?”

2. The case of the workman (deceased Bhim Sen) as it emerges from the statement of claim is that he was appointed as a watchman on 26th July, 2011 at Dholpur Krishi Sewa Sahkari Sabha, Fatehpur, District Kangra, H.P. by the managing committee through proper channel on monthly salary of Rs. 1800/. He had been discharging his duties honestly and diligently. He had never been given any breaks in service and had worked continuously and

uninterruptedly with the respondent. As per the policy of Government, the workman was eligible for regularization as a watchman. The act and conduct of workman was found satisfactory and there was no complaint against him during his service period. On August, 2015 the workman had received a letter to the effect that his services had been shifted from night duty to day duty. Another letter dated 30.9.2015 had also been sent by the respondent to him, *vide* which his service had been terminated as per the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called the 'Act' for short). No inquiry was conducted by the respondent nor the workman had ever been associated in the preliminary report/resolution. The retrenchment of the workman was illegal, unjust and contrary to law. The provisions of Section 25-F of the Act had been violated by the respondent, as no notice in writing had been given to the workman, nor any reason had been assigned for his retrenchment. The act of the respondent amounted to unfair labour practice as envisaged under Section 2(ra) of the Act. The principle of natural justice had also been violated. The workman was entitled to equal pay for equal work as provided under Article 39 (d) of the Constitution. The workman had completed more than 240 days in each calendar year. He, thus, was entitled for regularization. Therefore, the workman prays for his re-engagement with all consequential benefits.

3. The respondent despite being properly served had failed to put in appearance before this Court on 19.9.2017, hence was proceeded against *ex parte*.

4. Thereafter, the workman was directed to adduce *ex parte* evidence. He examined himself as PW1 and tendered in evidence post cards Ex.PW1/B and Ex.PW1/B and copy of complaint as Ex.PW1/C. Be it noted that during the pendency of the proceedings Shri Bhim Sen, the workman expired and his legal representatives were brought on record by order dated 14.9.2018. Thereafter, the legal representatives, namely, Smt. Shashi Kanta and Shri Amit Kumar also examined themselves as PW2 and PW3 and tendered in evidence their statements by way of affidavits Ex.PW2/A and Ex.PW3/A respectively.

5. PW1 Shri Bhim Sen (now deceased) in his chief-examination reiterated the stand taken by him in his statement of claim. His legal representatives, namely, Smt. Shashi Kanta and Shri Amit Kumar have also duly endorsed and supported his case. Ex.PW1/A is the post card sent by the respondent to Shri Bhim Sen to the effect that *vide* resolution no. 9 dated 10.8.2015, it had been resolved that the workman shall perform day duty instead of night duty. Ex.PW1/B is another post card, which shows that *vide* resolution no. 2 dated 27.9.2015, he had been relieved of the duty of chowkidar since 30.9.2015.

6. The aforesaid evidence of the workman and his legal representatives has remained unrebutted on record, as the respondent has not come forward to contest the statement of claim or to cross-examine the workman and his legal representatives. It, thus, stands proved from the ocular evidence on record that the workman Shri Bhim Sen was appointed by the respondent as a watchman on 26.7.2011 and he had worked as such until 30.9.2015. It is also evident from the evidence on record that the workman had not been allowed to join his duties after his termination by the respondent. Evidence also stands led to the effect that the services of the workman had been terminated illegally by the respondent. The non appearance of the respondent is suggestive of the fact that he has nothing to say in the matter. The unrebutted evidence of the workman and his legal representatives clearly establishes on record that the workman had worked for more than 240 days preceding twelve calendar months from the date of his termination. It is also apparent from the evidence that no notice had been issued to the workman prior to the termination of his services, nor any compensation had been paid to him. No inquiry had ever

been conducted against the workman before terminating his services. As regards the salary, it stands clearly stated by the workman and his legal representatives that the workman had been drawing a salary of Rs.1800/- per month on the date of his termination.

7. No doubt, it has also been alleged that the principle of 'last come first go' had not been adhered to by the respondent, but neither any seniority list has seen the light of the day, nor in the ocular evidence there is a mention of the names of the persons junior to the workman, who had been retained in service, after his services had been terminated. So, it cannot be said that the respondent had violated the provisions of Section 25-G of the Act.

8. Oral evidence has also been led on record to the effect that the workman was not gainfully employed during his forced idleness. Therefore, this Court, in the absence of any rebuttal to it, has no option but to hold that after the disengagement/termination of the workman, he had remained unemployed. The unrebutted evidence of the workman and his legal representatives on record clearly establishes the violation of Section 25-F of the Act by the respondent.

9. In view of the foregoing discussion and findings arrived at by me above, the termination of the services of the workman Shri Bhim Sen (deceased) by the respondent on 30.9.2015 is hereby set aside and quashed. Since, the termination of the workman has been found to be illegal, Smt. Shashi Kanta (one of the petitioners), who is his legal representative, being his wife, is entitled to seek reinstatement and with continuity in service till the workman was alive. As to back wages, both the petitioners are held to be entitled to 50% back wages from the respondent from the date of illegal termination of the workman till the reinstatement of Smt. Shashi Kanta, one of the legal representatives, by the respondent. Consequently, the petition is allowed to the extent above. There shall be no costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 889/2016

Date of Institution : 24.12.2016

Date of Decision : 02.09.2019

Shri Suta Ram s/o Shri Dikti Ram, r/o Village Khajjan Basa, P.O. Sadwan, Tehsil Nurpur, District Kangra, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P.

. Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Mukul Vaid, Adv. Vice

For the Respondents : Sh. B. C. Katoch, ADA

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the alleged termination of services of Shri Suta Ram s/o Shri Dikti Ram, r/o Village Khajjan Basa, P.O. Sadwan, Tehsil Nurpur, District Kangra, H.P. during December, 1986 by (i) the Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P., (ii) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after more than 24 years vide demand notice dated nil received in the Labour Office Kangra at Dharamshala on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of more than 24 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis during the year 1985 in

HPPWD Sub Divisions-I and II, Nurpur and had worked as such until the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para No. 3 of the petition. The mates of the petitioner were Shri Prakash and Shri Kishan Bahadur. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No. 1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25.5.2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections, regarding lack of maintainability and that the petition was bad on the grounds of delay and laches. On merits, it is denied that the services of the petitioner had been engaged as beldar in the year 1985 in HPPWD Division, Nurpur. It is also denied that the petitioner was disengaged by the respondents in the year 1990. It is asserted that he was engaged as a daily wager by HPPWD Sub Division Suliali, Division Jassur and had worked intermittently *w.e.f.* December, 1986. He had not completed 240 days in every calendar year. The petitioner thereafter had left the work of his own sweet will and had never approached the department. It is claimed that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is denied that respondent No. 1 had reengaged workers on 25.5.2010. Infact workers were reengaged by the respondents as per the orders of the Hon'ble High Court. It is admitted that HPPWD Divisions Nurpur and Jawali are involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. It is denied that a pick and choose policy had been adopted by the respondents. Neither any junior had been retained nor engaged by the respondent, so there was no violation of the provisions of Sections 25-G and 25-H of the Act. It is denied that the petitioner had made various requests and that assurances had been given to him by the respondents. After leaving the work in December, 1986, the petitioner had never approached the respondents and had raised the demand notice only in the year 2011, *i.e.* after about 25 years. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 7.7.2018:

1. Whether termination of the services of petitioner by the respondents during December, 1986 is/was legal and justified as alleged? .OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? .OPR.
4. Whether the claim petition is bad on the ground of delay and laches as alleged? .OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Suta Ram examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Gian Chand (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19.8.1998 as Ex. PW1/B, copy of letter dated 18.12.1999 as Ex. PW1/C, copy of notice dated 4.5.2002 as Ex. PW1/D, copy of resolution dated 18.7.2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18.1.2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23.7.1994 as Ex. RW1/C, copy of office order dated 29.11.2010 as Ex. RW1/D, copy of letter dated 19.8.1998 as Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Lata as Ex. RW1/F, copy of letter dated 18.1.2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : Negative

Issue No. 3 : Yes

Issue No. 4 : Not pressed

Relief : Claim petition dismissed *vide* operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Suta Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before the year 1994, HPPWD Division was at Jassur. He also admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No.PBW-(A)-A(1)17/94. He denied that he had not worked with the respondents. Volunteered that, he had worked regularly from the year 1985 until the year 1990. He denied that he had not worked from the year 1985 until November, 1986 and from February, 1987 upto the year 1990. He also denied that he had only worked for 06 days in December, 1986. He further denied that no breaks had been given by the department. He also denied that he was never disengaged by the respondents/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19.8.1998 regarding the posting of Smt. Kusum Sharma as a daily waged Store Clerk.

13. Ex. PW1/C is the copy of letter dated 18.12.1999 to the Chief Executive Engineer, HPPWD, US Club, Shimla by Smt. Kusum Lata.

14. Ex. PW1/D is the copy of letter dated 4.5.2002 regarding notice under Section 80 of CPC to The Secretary, HP Public Works Department, Government of Himachal Pradesh, Shimla.

15. Ex. PW1/E is the copy of letter dated 18.7.2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh.

16. Ex. PW1/F is the copy of letter/UPC dated 18.7.2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh and others.

17. Ex. PW1/G is the copy of postal receipts.

18. Ex. PW1/H is the copy of letter dated 18.1.2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 until the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Gian Chand stated that he was engaged in the year 1986 as a Mate in HPPWD Division, Nurpur. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondents.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29.11.2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

23. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

24. Ex. RW1/C is the copy of Office Order dated 23.7.1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

25. Ex. RW1/D is the copy of another Office Order dated 29.11.2010 with regard to implementation of the award of this Court dated 22.12.2007.

26. Ex. RW1/E is the copy of letter dated 19.8.1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

27. Ex. RW1/F is the copy of letter dated 18.12.1999 regarding representation of Smt. Kusum Lata.

28. Ex. RW1/G is the copy of letter dated 18.1.2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HP HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

29. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondents in the year 1985 and that he had worked as such until the year 1990. The respondents took the stand that the petitioner had been engaged as a daily waged beldar in HPPWD Sub Division Suliali *w.e.f.* December, 1986 intermittently. The petitioner denied this case of the respondents. He while under cross-examination categorically denied that he had not worked with the department from the year 1985 until November, 1986 and from February, 1987 until the year 1990. However, the respondents have placed and proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. Its perusal discloses that the services of the petitioner were engaged by respondent No. 2 in the month of December, 1986, for the first time as a daily waged beldar and he had worked only for six days. The claimant/petitioner has not placed and exhibited on record any document to show that he had regularly worked with the respondents from the year 1985 until the year 1990.

33. A plea was taken by the respondents that the petitioner had abandoned the work himself. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand reported in [2019 (160) FLR 161], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondents calling upon him to resume the duties. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. Thus, the plea of abandonment put forth by the respondents/employers is not established.

34. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of 12 calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. As per the mandays chart Ex. RW1/H, the petitioner had only worked for 06 days in the month of December, 1986. Thus, in his total service for a period of about one month in December, 1986 he had only worked for 06 days. Therefore, the provisions of Sections 25-F and 25-N of the Act are not attracted in this case.

35. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondents. A detail of such persons has been given in para 3 of the statement of claim. Shri Suta Ram (PW1) also named such persons to

be junior to him in his chief-examination, being in the shape of affidavit Ex. PW1/A. The respondents, and in particular respondent No. 1, refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the respondents after his alleged termination. Significantly, no seniority list has been placed and exhibited on record or any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondents at the time of the termination of his services. The statements of the witnesses examined by the petitioner as Shri Sukar Deen (PW2) and Shri Gian Chand (PW3) are silent in this regard. There is also no whisper in their testimonies that persons junior to the petitioner are still in service. Both these witnesses claimed that their services were engaged by respondent No. 1 in the year 1986. However, they both have not mentioned the dates and months of their initial engagements in their substantive evidence. It is also not made out from their sworn testimonies that they were junior to the petitioner. It is apparent from the record that the services of the petitioner as a daily waged beldar for the first time were engaged by respondent No. 2 in the month of December, 1986. So, the testimonies of the aforesaid witnesses are of no help to the petitioner to establish on record that the principle of 'last come first go' had not been adhered to by the respondents. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondents during the pendency of this case.

36. Faced with the situation, by referring to the copy of mandays chart pertaining to Smt. Kusum Lata which has been placed on record by respondent No. 1 as Ex. RW1/J, it was contended by the learned Counsel for the petitioner that she is certainly junior to the petitioner, as she is shown to have been engaged in service in Suliali Sub Division, HPPWD Suliali in February, 2000. This cannot be accepted. Placed on record by respondent No. 1 is another copy of mandays chart pertaining to said Smt. Kusum Lata as Ex. RW1/I. As per this document Smt. Kusum Lata had initially been engaged in the month of November, 1983 in Sub Division No.1 HPPWD, Banikhet and that she had continued to work as such there until November, 1988. Placed on record is also her representation to the Engineer-in-Chief, HPPWD Shimla, copy of which is Ex. RW1/F. On her representation, it is evident that she stood transferred and posted as a daily waged Store Clerk from 7th Circle HPPWD Dalhousie to 9th Circle HPPWD Nurpur. Reference in this regard can be made to the copy of letter dated 18.1.2000 of Engineer-in-Chief, HPPWD Shimla, Ex. RW1/G. On allotment of one post of Store Clerk in 9th Circle, HPPWD Nurpur, vide the aforesaid letter, Smt. Kusum Lata was adjusted as such there, where she has been working regularly from the year 2000 until January, 2009, as is evident from the copy of her mandays days chart, Ex. RW1/J. So, she can also not be termed as a junior to the petitioner. There is nothing on record to show that the services of said Smt. Kusum Lala had ever been disengaged at any point of time. Rather she appears to have been working with the HPPWD Division Nurpur. Her joining in the 9th Circle HPPWD Nurpur, on her request in the month of February, 2000 cannot make her junior to the petitioner, particularly when her year of joining is much prior to that of the petitioner in the HPPWD department *i.e.* she was engaged in the year 1983, whereas the petitioner, as discussed above, had initially been engaged in December, 1986. So, it cannot be said that Smt. Kusum Lata being a junior to the petitioner had been retained in service by the respondents. Therefore, it cannot be said that the respondents had violated the principle of 'last come first go', as envisaged in Section 25-G of the Act.

37. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands have been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

38. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3 :

39. Taking into account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4 :

40. Not pressed.

Relief :

41. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 880/2016

Date of Institution : 07.12.2016

Date of Decision : 03.09.2019

Shri Amar Singh s/o Shri Diwan Chand, r/o Village Bariara, P.O. Khel, Tehsil Nurpur,
 District Kangra, H.P. *. Petitioner.*

Versus

1. The Executive Engineer, HPPWD, Division, Nurpur, District Kangra, H.P.

2. The Executive Engineer, HPPWD Division, Jawali, District Kangra, H.P.

. Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Mukul Vaid, Adv. Vice

For the Respondent(s) : Sh. B.C. Katoch, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the alleged termination of services of Shri Amar Singh s/o Shri Diwan Chand, r/o Village Bariara, P.O. Khel, Tehsil Nurpur, District Kangra, H.P. during year 1990 by (i) the Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P., (ii) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after about 21 years *vide* demand notice dated nil received in the Labour Office Kangra at Dharamshala on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the year 1979 in HPPWD Sub Divisions-I and II, Nurpur and had worked as such till the year 1990. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para No. 3 of the petition. The mate of the petitioner was Shri Sahib Singh. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No. 1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25.5.2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification no. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1979 until the year 1990. It was asserted that the petitioner had never been engaged by the respondent so the question of completing 240 days and retrenchment of the petitioner did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondents, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondents. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 24.3.2018:

1. Whether termination of services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged? . .OPP.
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form? . .OPR.
4. Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? . .OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Amar Singh examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19.8.1998 as Ex. PW1/B, copy of letter dated 18.12.1999 as Ex. PW1/C, copy of notice dated 4.5.2002 as Ex. PW1/D, copy of resolution dated 18.7.2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18.1.2000. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23.7.1994 as Ex. RW1/C, copy of office order dated

29.11.2010 as Ex. RW1/D, copy of letter dated 19.8.1998 as Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Lata as Ex. RW1/F, copy of letter dated 18.1.2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Negative

Issue No. 2 : Negative

Issue No. 3 : Affirmative

Issue No. 4 : Not pressed/redundant

Relief : Claim petition dismissed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Amar Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/H.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification no.PBW-(A)-A(1)17/94. He admitted that he had never worked in Jawali Division. Volunteered that, he had worked in Nurpur Division. He denied that he had not worked in Nurpur Division. He also denied that he had never worked with the respondents. Self stated that, he had worked regularly from the year 1979 until the year 1990. He denied that he had never worked for the period from the year 1979 until the year 1990. He further denied that he was never disengaged by the respondents/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he

cultivates. He also admitted that he is doing the days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19.8.1998 regarding posting of Smt. Kusum Sharma as a daily waged Store Clerk.

13. Ex. PW1/C is the copy of letter dated 18.12.1999 to the Chief Executive Engineer, HPPWD, US Club, Shimla by Smt. Kusum Lata.

14. Ex. PW1/D is the copy of letter dated 4.5.2002 regarding notice under Section 80 of CPC to The Secretary, HP Public Works Department, Government of Himachal Pradesh, Shimla.

15. Ex. PW1/E is the copy of letter dated 18.7.2002 regarding issuance of muster rolls to the daily waged beldars from the President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh.

16. Ex. PW1/F is the copy of letter/UPC dated 18.7.2002 regarding issuance of muster rolls to the daily waged beldars from the President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh and others.

17. Ex. PW1/G is the copy of postal receipts.

18. Ex. PW1/H is the copy of letter dated 18.1.2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 until the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Harnam Singh stated that he was engaged in the year 1986 as a Mate in HPPWD Division, Nurpur. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent No.1) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this

Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29.11.2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

23. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to the shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

24. Ex. RW1/C is the copy of Office Order dated 23.7.1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

25. Ex. RW1/D is the copy of another Office Order dated 29.11.2010 with regard to implementation of the award of this Court dated 22.12.2007.

26. Ex. RW1/E is the copy of letter dated 19.8.1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

27. Ex. RW1/F is the copy of letter dated 18.12.1999 regarding representation of Smt. Kusum Lata.

28. Ex. RW1/G is the copy of letter dated 18.1.2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

29. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by respondent No. 1 in the year 1979 and that he had worked as such until the year 1990. It was the stand taken by the respondents that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the year 1979 by the respondents and that he had not worked as such until the year 1990, but, however, respondent No.1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No. 2 even for a single day from the year 1986 until the year 1990. The petitioner in his substantive evidence also clearly admitted that he never worked in Jawali Division. No mandays chart has been

proved on record by the petitioner showing him to have ever worked with respondent No.1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Significantly, the petitioner neither in his pleadings, nor in his ocular evidence has stated the date on which he was engaged by respondent No.1. There is also no pleading or evidence to the effect as to on which specific date his services stood terminated by this respondent. Only the years of joining and termination of the petitioner stand specified in the statement of claim and his statement by way of affidavit Ex. PW1/A. Although, witnesses, namely, Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3), were examined by the petitioner in support of his case, but I find that their statements are of no help to him, as their service records were not brought on the file to show that they had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those twelve years, the period for which he claims to have worked with respondent No.1. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondents from the year 1979 until the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents, has been placed on record by him.

33. From the ocular and documentary evidence of the respondents available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

34. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

35. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3 :

36. Taking into account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4 :

37. Not pressed. Even otherwise, the plea of delay and laches would have been relevant had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

Relief:

38. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 771/2016

Date of Institution : 19.11.2016

Date of Decision : 03.09.2019

Shri Nasib Singh s/o Shri Labh Singh, r/o Village and Post Office Mastgarh, Tehsil Nurpur, District Kangra, H.P. . .Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P.

. .Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Mukul Vaid, Adv vice.

For the Respondent(s) : Sh. B.C. Katoch, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Nasib Singh s/o Shri Labh Singh, r/o Village and Post Office Mastgarh, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after more than 21 years *vide* demand notice dated-nil-received on 29.11.2012, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of more than 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis during the year 1980 in HPPWD Sub Divisions-I and II, Nurpur and had worked as such till the year 1990. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metallised roads. The petitioner had worked for the preparation of roads with many juniors retained by the employer and also with the reengaged employees as detailed in para No. 3 of the petition. The mates of the petitioner were S/Shri Kushal Singh, Dhian Chand and Pritam Singh. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No. 1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25.5.2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* HP Government Notification no. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1980 until the year 1990. It was asserted that the petitioner had never been engaged by the respondents so the question of completing 240 days and retrenchment of the petitioner did not arise. It is admitted that HPPWD Division Nurpur was

involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondents, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondents. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 15.9.2018:

1. Whether termination of the service of the petitioner by the respondents during year, 1990 is/was legal and justified as alleged? . . . *OPP.*
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . . . *OPP.*
3. Whether the petition is not maintainable in the present form as alleged? . . . *OPR.*
4. Whether the claim petition is bad on ground of delay and laches as alleged? . . . *OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Nasib Singh examined himself as PW1 and also examined Shri Jagat Ram (PW2) as his witness. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19.8.1998 as Ex. PW1/B, copy of letter dated 18.12.1999 as Ex. PW1/C, copy of notice dated 4.5.2002 as Ex. PW1/D, copy of resolution dated 18.7.2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18.1.2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23.7.1994 as Ex. RW1/C, copy of office order dated 29.11.2010 as Ex. RW1/D, copy of letter dated 19.8.1998 as Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Lata as Ex. RW1/F, copy of letter dated 18.1.2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days charts of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Deputy District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : Negative

Issue No. 3 : Yes

Issue No.4 : Not pressed/redundant

Relief : Claim petition dismissed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Nasib Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No.PBW-(A)-A(1)17/94. He admitted that he had never worked in Jawali Division. Volunteered that, he had worked in Nurpur Division. He denied that he had not worked in Nurpur Division. He also denied that he had never worked with the respondents. Self stated that, he had worked regularly from the year 1980 upto the year 1990. He denied that he was never disengaged by the respondents/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing the days' drudgery privately. Self stated that, as and when the work is available.

11. Ex. PW1/B is the copy of letter dated 19.8.1998 regarding the posting of Smt. Kusum Sharma as a daily waged Store Clerk.

12. Ex. PW1/C is the copy of letter dated 18.12.1999 to the Chief Executive Engineer, HPPWD, US Club, Shimla by Smt. Kusum Lata.

13. Ex. PW1/D is the copy of letter dated 4.5.2002 regarding notice under Section 80 of CPC to The Secretary, HP Public Works Department, Government of Himachal Pradesh, Shimla.

14. Ex. PW1/E is the copy of letter dated 18.7.2002 regarding issuance of muster rolls to the daily waged beldars from the President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh.

15. Ex. PW1/F is the copy of letter/UPC dated 18.7.2002 regarding issuance of muster rolls to the daily waged beldars from the President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh and others.

16. Ex. PW1/G is the copy of postal receipts.

17. Ex. PW1/H is the copy of letter dated 18.1.2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

18. PW2 Shri Jagat Ram testified that he was engaged as a beldar in the year 1986 in HPPWD Division, Nurpur. The petitioner had also worked with him in the department in the year 1986. In the year 1990 the petitioner had been removed, whereas he had superannuated in June, 2012. He admitted in the cross-examination that the presence of a workman is marked by the department. He also admitted that the record of the workman is maintained by the department. He specifically denied that the petitioner had never worked in the department.

19. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent No.1) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29.11.2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

20. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

21. Ex. RW1/C is the copy of Office Order dated 23.7.1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

22. Ex. RW1/D is the copy of another Office Order dated 29.11.2010 with regard to implementation of the award of this Court dated 22.12.2007.

23. Ex. RW1/E is the copy of letter dated 19.8.1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

24. Ex. RW1/F is the copy of letter dated 18.12.1999 regarding representation of Smt. Kusum Lata.

25. Ex. RW1/G is the copy of letter dated 18.1.2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HP HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

26. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

27. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub Division HPPWD Banikhet.

28. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub Division HPPWD Suliali.

29. The version of the petitioner is that his services were engaged as a daily waged beldar by respondent No. 1 in the year 1980 and that he had worked as such until the year 1990. It was the stand taken by the respondents that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the year 1980 by the respondents and that he had not worked as such until the year 1990, but, however, respondent No. 1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No. 2 even for a single day from the year 1980 until the year 1990. The petitioner in his substantive evidence also clearly admitted that he never worked in Jawali Division. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent no.1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Although, witness, namely, Shri Jagat Ram (PW2), was examined by the petitioner in support of his case, but I find that his statement is of no help to him, as his service record was not brought on the file to show that he had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those eleven years, the period for which he claims to have worked with respondent No.1. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondents from the year 1980 until the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster-rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents, has been placed on record by him.

30. From the ocular and documentary evidence of the respondent available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

31. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

32. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3 :

33. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4 :

34. Not pressed. Even otherwise, the plea of delay and laches would have been relevant had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

Relief:

35. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 26/2018

Date of Institution : 28.3.2018

Date of Decision : 05.09.2019

Shri Jotu Ram s/o Shri Hoshiyara, r/o Village Banotu, P.O. Sahoo, Tehsil & District Chamba, H.P. . Petitioner.

Versus

The General Manager, M/s Sahoo Hydro Power Project, Village Kurtha, P.O. Sahoo, Tehsil & District Chamba, H.P. . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For the Respondent : Shri Dharam Malhotra, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Jotu Ram s/o Shri Hoshiyara, r/o Village Banotu, P.O. Sahoo, Tehsil & District Chamba, H.P. during February, 2016 (as alleged by the workman) by the General Manager, M/S Sahoo Hydro Power Project, Village Kurtha, P.O. Sahoo, Tehsil & District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was initially engaged as a daily waged labourer on muster-roll basis by the respondent without any appointment letter in the year 2012. He thereafter had worked continuously with the respondent for many years. It was undertaken by the respondent that the company would provide a job for forty years to the petitioner, as his land was used in the construction of the hydro project. However, during February, 2016 his services were orally terminated by the respondent. He being a poor man, having no source of income, had approached the respondent many times to re-engage him, but without success. No one month's notice in writing indicating the reasons for retrenchment had been given to him, nor any retrenchment compensation was paid. The respondent had violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). While terminating his services, the respondent had also not followed the principle of 'last come first go', as persons junior to him were retained in service continuously without any breaks and they have also been regularized. No opportunity of re-employment was ever given to him. Provisions of Sections 25-G and 25-H of the Act were also violated by the respondent. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, locus standi, non-joinder and misjoinder of parties, suppression of material facts and cause of action. The contents of the petition were denied on merits. It was asserted that the petitioner had never been engaged as a labourer by the respondent. No land of his had ever been acquired or purchased by the respondent. So, providing him a job for forty years did not arise. Only those families were provided the job, whose lands had been acquired/purchased by the respondent. Since, the petitioner had never been engaged by the respondent, the question of termination of his services did not arise. It was denied that the respondent had not complied with the provisions of Sections 25-F, 25-G and 25-H of the Act. The respondent, thus, prays for the dismissal of the claim.

4. Arguments of the learned counsel for the respondent heard and records gone through.

5. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent during February, 2016 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis on muster-roll as a labourer in the year 2012. It was also his claim that he had completed 240 days in each calendar year. A plea was also taken to the effect that the respondent had not adhered to the principle of 'last come first go', as persons junior to the petitioner were retained and that fresh hands had also been engaged. It was also asserted that

no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

6. However, when the case was listed for filing of rejoinder and documents by the petitioner for 05.9.2019, neither he nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

7. It will be apt at this stage to take note of the relevant provisions of the Act. Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

8. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex parte and decide the reference application in the absence of the defaulting party.”

9. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

10. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.— If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

11. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to adduce evidence or argue his case.

12. In the instant case, neither the petitioner nor his counsel had put in appearance before this Tribunal on 5.9.2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

13. Since, it is disputed by the respondent that the services of the petitioner had been engaged on daily wage basis, so firstly it was required of the petitioner to prove on record that he had been engaged by the respondent on daily waged basis and then to establish on record, as per the reference, that the termination of his services in the year 2016 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but his allegations therein have remained a mere saying on record, as no evidence in support thereof has been led by him. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief, as claimed for in the statement of claim.

14. In the light of what has been discussed hereinabove, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 31/2018

Date of Institution : 28.3.2018

Date of Decision : 05.09.2019

Shri Aaso Ram s/o Shri Prahlad, r/o Village Banotu, P.O. Sahoo, Tehsil & District Chamba, H.P. *.Petitioner.*

Versus

The General Manager, M/s Sahoo Hydro Power Project, Village Kurtha, P.O. Sahoo, Tehsil & District Chamba, H.P. *.Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For the Respondent : Shri Dharam Malhotra, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Aaso Ram s/o Shri Prahlad, r/o Village Banotu, P.O. Sahoo, Tehsil & District Chamba, H.P. during February, 2016 (as alleged by the workman) by the General Manager, M/s Sahoo Hydro Power Project, Village Kurtha, P.O. Sahoo, Tehsil & District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was initially engaged as a daily waged labourer on muster roll basis by the respondent without any appointment letter in the year 2012. He thereafter had worked continuously with the respondent for many years. It was undertaken by the respondent that the company would provide a job for forty years to the petitioner, as his land was used in the construction of the hydro project. However, during February, 2016 his services were orally terminated by the respondent. He being a poor man, having no source of income, had approached the respondent many a times to re-engage him, but without success. No one month's notice in writing indicating the reasons for retrenchment had been given to him, nor any retrenchment compensation was paid. The respondent had violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). While terminating his services, the respondent had also not followed the principle of 'last come first go', as persons junior to him were retained in service continuously without any breaks and they have also been regularized. No opportunity of re-employment was ever given to him. Provisions of Sections 25-G and 25-H of the Act were also violated by the respondent. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, locus standi, non-joinder and misjoinder of parties, suppression of material facts and cause of action. The contents of the petition were denied on merits. It was asserted that the petitioner had never been engaged as a labourer by the respondent. No land of his had ever been acquired or purchased by the respondent. So, providing him a job for forty years did not arise. Only those families were provided the job, whose lands had been acquired/purchased by the respondent. Since, the petitioner had never been engaged by the respondent, the question of termination of his services did not arise. It was denied that the respondent had not complied with the provisions of Sections 25-F, 25-G and 25-H of the Act. The respondent, thus, prays for the dismissal of the claim.

4. Arguments of the learned counsel for the respondent heard and records gone through.

5. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent during February, 2016 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis on muster roll as a labourer in the year 2012. It was also his claim that he had completed 240 days in each calendar year. A plea was also taken to the effect that the respondent had not adhered to the principle of 'last come first go', as persons junior to the petitioner were retained and that fresh hands had also been engaged. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

6. However, when the case was listed for filing of rejoinder and documents by the petitioner for 05.9.2019, neither he nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

7. It will be apt at this stage to take note of the relevant provisions of the Act. Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

8. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex parte and decide the reference application in the absence of the defaulting party.”

9. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

10. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

11. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to adduce evidence or argue his case.

12. In the instant case, neither the petitioner nor his counsel had put in appearance before this Tribunal on 5.9.2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

13. Since, it is disputed by the respondent that the services of the petitioner had been engaged on daily wage basis, so firstly it was required of the petitioner to prove on record that he

had been engaged by the respondent on daily waged basis and then to establish on record, as per the reference, that the termination of his services in the year 2016 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but his allegations therein have remained a mere saying on record, as no evidence in support thereof has been led by him. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief, as claimed for in the statement of claim.

14. In the light of what has been discussed hereinabove, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 24/2018
Date of Institution : 28.3.2018
Date of Decision : 05.09.2019

Shri Kishori Lal s/o Shri Prabhu Ram, r/o Village Banotu, P.O. Sahoo, Tehsil & District Chamba, H.P. . Petitioner.

Versus

The General Manager, M/s Sahoo Hydro Power Project, Village Kurtha, P.O. Sahoo, Tehsil & District Chamba, H.P. . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For the Respondent : Shri Dharam Malhotra, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Kishori Lal s/o Shri Prabhu Ram, r/o Village Banotu, P.O. Sahoo, Tehsil & District Chamba, H.P. during February, 2016 (as alleged by the workman) by the General Manager, M/S Sahoo Hydro Power Project, Village Kurtha, P.O. Sahoo, Tehsil & District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was initially engaged as a daily waged labourer on muster roll basis by the respondent without any appointment letter in the year 2012. He thereafter had worked continuously with the respondent for many years. It was undertaken by the respondent that the company would provide a job for forty years to the petitioner, as his land was used in the construction of the hydro project. However, during February, 2016 his services were orally terminated by the respondent. He being a poor man, having no source of income, had approached the respondent many a times to re-engage him, but without success. No one month's notice in writing indicating the reasons for retrenchment had been given to him, nor any retrenchment compensation was paid. The respondent had violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). While terminating his services, the respondent had also not followed the principle of 'last come first go', as persons junior to him were retained in service continuously without any breaks and they have also been regularized. No opportunity of re-employment was ever given to him. Provisions of Sections 25-G and 25-H of the Act were also violated by the respondent. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, locus standi, non-joinder and misjoinder of parties, suppression of material facts and cause of action. The contents of the petition were denied on merits. It was asserted that the petitioner had never been engaged as a labourer by the respondent. No land of his had ever been acquired or purchased by the respondent. So, providing him a job for forty years did not arise. Only those families were provided the job, whose lands had been acquired/purchased by the respondent. Since, the petitioner had never been engaged by the respondent, the question of termination of his services did not arise. It was denied that the respondent had not complied with the provisions of Sections 25-F, 25-G and 25-H of the Act. The respondent, thus, prays for the dismissal of the claim.

4. Arguments of the learned counsel for the respondent heard and records gone through.

5. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent during February, 2016 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis on muster roll as a labourer in the year 2012. It was also his claim that he had completed 240 days in each calendar year. A plea was also taken to the effect that the respondent had not adhered to the principle of 'last come first go', as persons junior to the petitioner were retained and that fresh hands had also been engaged. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

6. However, when the case was listed for filing of rejoinder and documents by the petitioner for 05.9.2019, neither he nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

7. It will be apt at this stage to take note of the relevant provisions of the Act. Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

8. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex parte and decide the reference application in the absence of the defaulting party.”

9. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

10. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.— If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

11. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to adduce evidence or argue his case.

12. In the instant case, neither the petitioner nor his counsel had put in appearance before this Tribunal on 5.9.2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

13. Since, it is disputed by the respondent that the services of the petitioner had been engaged on daily wage basis, so firstly it was required of the petitioner to prove on record that he

had been engaged by the respondent on daily waged basis and then to establish on record, as per the reference, that the termination of his services in the year 2016 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but his allegations therein have remained a mere saying on record, as no evidence in support thereof has been led by him. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief, as claimed for in the statement of claim.

14. In the light of what has been discussed hereinabove, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 29/2018

Date of Institution : 28.3.2018

Date of Decision : 05.09.2019

Shri Gianu s/o Shri Mohan, r/o Village Banotu, P.O. Sahoo, Tehsil & District Chamba, H.P.
. Petitioner.

Versus

The General Manager, M/S Sahoo Hydro Power Project, Village Kurtha, P.O. Sahoo, Tehsil & District Chamba, H.P.
. Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For the Respondent : Shri Dharam Malhotra, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Gianu s/o Shri Mohan, r/o Village Banotu, P.O. Sahoo, Tehsil & District Chamba, H.P. during February, 2016 (as alleged by the workman) by the General Manager, M/S Sahoo Hydro Power Project, Village Kurtha, P.O. Sahoo, Tehsil & District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was initially engaged as a daily waged labourer on muster-roll basis by the respondent without any appointment letter in the year 2012. He thereafter had worked continuously with the respondent for many years. It was undertaken by the respondent that the company would provide a job for forty years to the petitioner, as his land was used in the construction of the hydro project. However, during February, 2016 his services were orally terminated by the respondent. He being a poor man, having no source of income, had approached the respondent many a times to re-engage him, but without success. No one month's notice in writing indicating the reasons for retrenchment had been given to him, nor any retrenchment compensation was paid. The respondent had violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). While terminating his services, the respondent had also not followed the principle of 'last come first go', as persons junior to him were retained in service continuously without any breaks and they have also been regularized. No opportunity of re-employment was ever given to him. Provisions of Sections 25-G and 25-H of the Act were also violated by the respondent. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, locus standi, non-joinder and misjoinder of parties, suppression of material facts and cause of action. The contents of the petition were denied on merits. It was asserted that the petitioner had never been engaged as a labourer by the respondent. No land of his had ever been acquired or purchased by the respondent. So, providing him a job for forty years did not arise. Only those families were provided the job, whose lands had been acquired/purchased by the respondent. Since, the petitioner had never been engaged by the respondent, the question of termination of his services did not arise. It was denied that the respondent had not complied with the provisions of Sections 25-F, 25-G and 25-H of the Act. The respondent, thus, prays for the dismissal of the claim.

4. Arguments of the learned counsel for the respondent heard and records gone through.

5. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent during February, 2016 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis on muster-roll as a labourer in the year 2012. It was also his claim that he had completed 240 days in each calendar year. A plea was also taken to the effect that the respondent had not adhered to the principle of 'last come first go', as persons junior to the petitioner were retained and that fresh hands had also been engaged. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

6. However, when the case was listed for filing of rejoinder and documents by the petitioner for 05.9.2019, neither he nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

7. It will be apt at this stage to take note of the relevant provisions of the Act. Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

8. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex parte and decide the reference application in the absence of the defaulting party.”

9. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

10. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

11. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to adduce evidence or argue his case.

12. In the instant case, neither the petitioner nor his counsel had put in appearance before this Tribunal on 5.9.2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

13. Since, it is disputed by the respondent that the services of the petitioner had been engaged on daily wage basis, so firstly it was required of the petitioner to prove on record that he

had been engaged by the respondent on daily waged basis and then to establish on record, as per the reference, that the termination of his services in the year 2016 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but his allegations therein have remained a mere saying on record, as no evidence in support thereof has been led by him. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief, as claimed for in the statement of claim.

14. In the light of what has been discussed hereinabove, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 30/2018

Date of Institution : 28.3.2018

Date of Decision : 05.09.2019

Shri Karmo s/o Shri Sidar, r/o Village Banotu, P.O. Sahoo, Tehsil & District Chamba, H.P.
. Petitioner.

Versus

The General Manager, M/S Sahoo Hydro Power Project, Village Kurtha, P.O. Sahoo, Tehsil & District Chamba, H.P.
. Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For the Respondent : Shri Dharam Malhotra, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Karmo s/o Shri Sidar, r/o Village Banotu, P.O. Sahoo, Tehsil & District Chamba, H.P. during February, 2016 (as alleged by the workman) by the General Manager, M/s Sahoo Hydro Power Project, Village Kurtha, P.O. Sahoo, Tehsil & District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was initially engaged as a daily waged labourer on muster roll basis by the respondent without any appointment letter in the year 2012. He thereafter had worked continuously with the respondent for many years. It was undertaken by the respondent that the company would provide a job for forty years to the petitioner, as his land was used in the construction of the hydro project. However, during February, 2016 his services were orally terminated by the respondent. He being a poor man, having no source of income, had approached the respondent many a times to re-engage him, but without success. No one month's notice in writing indicating the reasons for retrenchment had been given to him, nor any retrenchment compensation was paid. The respondent had violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). While terminating his services, the respondent had also not followed the principle of 'last come first go', as persons junior to him were retained in service continuously without any breaks and they have also been regularized. No opportunity of re-employment was ever given to him. Provisions of Sections 25-G and 25-H of the Act were also violated by the respondent. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, locus standi, non-joinder and misjoinder of parties, suppression of material facts and cause of action. The contents of the petition were denied on merits. It was asserted that the petitioner had never been engaged as a labourer by the respondent. No land of his had ever been acquired or purchased by the respondent. So, providing him a job for forty years did not arise. Only those families were provided the job, whose lands had been acquired/purchased by the respondent. Since, the petitioner had never been engaged by the respondent, the question of termination of his services did not arise. It was denied that the respondent had not complied with the provisions of Sections 25-F, 25-G and 25-H of the Act. The respondent, thus, prays for the dismissal of the claim.

4. Arguments of the learned counsel for the respondent heard and records gone through.

5. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent during February, 2016 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis on muster roll as a labourer in the year 2012. It was also his claim that he had completed 240 days in each calendar year. A plea was also taken to the effect that the respondent had not adhered to the principle of 'last come first go', as persons junior to the petitioner were retained and that fresh hands had also been engaged. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

6. However, when the case was listed for filing of rejoinder and documents by the petitioner for 05.9.2019, neither he nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

7. It will be apt at this stage to take note of the relevant provisions of the Act. Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

8. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex parte and decide the reference application in the absence of the defaulting party.”

9. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

10. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

11. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to adduce evidence or argue his case.

12. In the instant case, neither the petitioner nor his counsel had put in appearance before this Tribunal on 5.9.2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

13. Since, it is disputed by the respondent that the services of the petitioner had been engaged on daily wage basis, so firstly it was required of the petitioner to prove on record that he

had been engaged by the respondent on daily waged basis and then to establish on record, as per the reference, that the termination of his services in the year 2016 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but his allegations therein have remained a mere saying on record, as no evidence in support thereof has been led by him. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief, as claimed for in the statement of claim.

14. In the light of what has been discussed hereinabove, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 28/2018

Date of Institution : 28.3.2018

Date of Decision : 05.09.2019

Shri Sato Ram s/o Shri Hans Raj, r/o Village Banotu, P.O. Sahoo, Tehsil & District Chamba, H.P. . Petitioner.

Versus

The General Manager, M/s Sahoo Hydro Power Project, Village Kurtha, P.O. Sahoo, Tehsil & District Chamba, H.P. . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For the Respondent : Shri Dharam Malhotra, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Sato Ram s/o Shri Hans Raj, r/o Village Banotu, P.O. Sahoo, Tehsil & District Chamba, H.P. during February, 2016 (as alleged by the workman) by the General Manager, M/s Sahoo Hydro Power Project, Village Kurtha, P.O. Sahoo, Tehsil & District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was initially engaged by the respondent on daily waged basis on muster roll as a labourer without any appointment letter during the year 2012. The petitioner had been worked with the respondent continuously for many years. The respondent had undertaken that the company will provide job for a period of forty years to the petitioner/workman, as the land of the petitioner was given for construction of the project. During February, 2016 the services of the petitioner had been terminated by the respondent. The petitioner is a very poor man and as such he has no source of income. After termination of his services, he had approached the respondent, but without success. The services of the petitioner had orally been terminated by the respondent. The respondent had not complied with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). The petitioner had worked with the respondent until February, 2016, when his services were disengaged by the respondent illegally and wrongly without issuing any prior notice to him, as required under Section 25-F of the Act. While terminating the services of the petitioner, the respondent had not followed the principle of ‘last come first go’. The respondent had not followed the mandatory provisions of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, misjoinder of necessary parties, suppression of material facts and cause of action. The contents of the petition were denied on merits. It was asserted that the answering respondent had never engaged the petitioner as a labourer. No land of the petitioner had ever been acquired or purchased by the respondent, so the question of providing forty years job to him does not arise. The petitioner was never engaged by the respondent so the question of termination of his service did not arise. It was denied that the respondent had not complied with the provisions of Sections 25-F, 25-G and 25-H of the Act. The respondent, thus, pray for the dismissal of the claim.

4. Arguments of the learned counsel for the respondent heard and records gone through.

5. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent during February, 2016 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis on muster roll as a labourer in the year 2012. It was also his claim that he had completed 240 days in each calendar year. A plea was also taken to the effect that the respondent had not adhered to the principle of ‘last come first go’, as persons junior to the petitioner were retained and that fresh hands had also been engaged. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

6. However, when the case was listed for filing of the rejoinder and documents for 05.9.2019, neither he nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

7. It will be apt at this stage to take note of the relevant provisions of the Act. Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

8. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex parte and decide the reference application in the absence of the defaulting party.”

9. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

10. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.— If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

11. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, they are unwilling to adduce evidence or argue their case.

12. In the instant case, neither the petitioner nor his counsel had put in appearance before this Tribunal on 5.9.2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

13. Announced in the Open Court today this 5th day of September, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 32/2018
Date of Institution : 28.3.2018
Date of Decision : 05.09.2019

Shri Angrejo s/o Shri Basu, r/o Village Banotu, P.O. Sahoo, Tehsil & District Chamba, H.P.
. .Petitioner.

Versus

The General Manager, M/s Sahoo Hydro Power Project, Village Kurtha, P.O. Sahoo, Tehsil & District Chamba, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner
For the Respondent : Shri Dharam Malhotra, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Angrejo s/o Shri Basu, r/o Village Banotu, P.O. Sahoo, Tehsil & District Chamba, H.P. during February, 2016 (as alleged by the workman) by the General Manager, M/S Sahoo Hydro Power Project, Village Kurtha, P.O. Sahoo, Tehsil & District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was initially engaged as a daily waged labourer on muster roll basis by the respondent without any appointment letter in the year 2012. He thereafter had worked continuously with the respondent for many years. It was undertaken by the respondent that the company would provide a job for

forty years to the petitioner, as his land was used in the construction of the hydro project. However, during February, 2016 his services were orally terminated by the respondent. He being a poor man, having no source of income, had approached the respondent many a times to re-engage him, but without success. No one month's notice in writing indicating the reasons for retrenchment had been given to him, nor any retrenchment compensation was paid. The respondent had violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). While terminating his services, the respondent had also not followed the principle of 'last come first go', as persons junior to him were retained in service continuously without any breaks and they have also been regularized. No opportunity of re-employment was ever given to him. Provisions of Sections 25-G and 25-H of the Act were also violated by the respondent. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, locus standi, non-joinder and misjoinder of parties, suppression of material facts and cause of action. The contents of the petition were denied on merits. It was asserted that the petitioner had never been engaged as a labourer by the respondent. No land of his had ever been acquired or purchased by the respondent. So, providing him a job for forty years did not arise. Only those families were provided the job, whose lands had been acquired/purchased by the respondent. Since, the petitioner had never been engaged by the respondent, the question of termination of his services did not arise. It was denied that the respondent had not complied with the provisions of Sections 25-F, 25-G and 25-H of the Act. The respondent, thus, prays for the dismissal of the claim.

4. Arguments of the learned counsel for the respondent heard and records gone through.

5. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent during February, 2016 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis on muster roll as a labourer in the year 2012. It was also his claim that he had completed 240 days in each calendar year. A plea was also taken to the effect that the respondent had not adhered to the principle of 'last come first go', as persons junior to the petitioner were retained and that fresh hands had also been engaged. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

6. However, when the case was listed for filing of rejoinder and documents by the petitioner for 05.9.2019, neither he nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

7. It will be apt at this stage to take note of the relevant provisions of the Act. Section 2 (b) of the Act defines the Award as under:—

"(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;".

8. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it

fit. The Central Government has framed rules called "The Industrial Disputes (Central) Rules, 1957." Rule 10-B (9) reads thus:—

"10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex parte and decide the reference application in the absence of the defaulting party."

9. Rule 22 reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.— If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

10. The State of Himachal Pradesh has also framed rules called "The Industrial Disputes Rules, 1974." Rule 25 thereof reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.— If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

11. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to adduce evidence or argue his case.

12. In the instant case, neither the petitioner nor his counsel had put in appearance before this Tribunal on 5.9.2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

13. Since, it is disputed by the respondent that the services of the petitioner had been engaged on daily wage basis, so firstly it was required of the petitioner to prove on record that he had been engaged by the respondent on daily waged basis and then to establish on record, as per the reference, that the termination of his services in the year 2016 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but his allegations therein have remained a mere saying on record, as no evidence in support thereof has been led by him. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief, as claimed for in the statement of claim.

14. In the light of what has been discussed hereinabove, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 27/2018
Date of Institution : 28.3.2018
Date of Decision : 05.09.2019

Shri Chhanga Ram s/o Shri Chaudhary Ram, r/o Village Banotu, P.O. Sahoo, Tehsil & District Chamba, H.P. . . Petitioner.

Versus

The General Manager, M/S Sahoo Hydro Power Project, Village Kurtha, P.O. Sahoo, Tehsil & District Chamba, H.P. . . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner
For the Respondent : Shri Dharam Malhotra, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Chhanga Ram s/o Shri Chaudhary Ram, r/o Village Banotu, P.O. Sahoo, Tehsil & District Chamba, H.P. during February, 2016 (as alleged by the workman) by the General Manager, M/s Sahoo Hydro Power Project, Village Kurtha, P.O. Sahoo, Tehsil & District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was initially engaged as a daily waged labourer on muster roll basis by the respondent without any

appointment letter in the year 2012. He thereafter had worked continuously with the respondent for many years. It was undertaken by the respondent that the company would provide a job for forty years to the petitioner, as his land was used in the construction of the hydro project. However, during February, 2016 his services were orally terminated by the respondent. He being a poor man, having no source of income, had approached the respondent many a times to re-engage him, but without success. No one month's notice in writing indicating the reasons for retrenchment had been given to him, nor any retrenchment compensation was paid. The respondent had violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). While terminating his services, the respondent had also not followed the principle of 'last come first go', as person junior to him were retained in service continuously without any breaks and they have also been regularized. No opportunity of re-employment was ever given to him. Provisions of Sections 25-G and 25-H of the Act were also violated by the respondent. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, locus standi, non-joinder and misjoinder of parties, suppression of material facts and cause of action. The contents of the petition were denied on merits. It was asserted that the petitioner had never been engaged as a labourer by the respondent. No land of his had ever been acquired or purchased by the respondent. So, providing him a job for forty years did not arise. Only those families were provided the job, whose lands had been acquired/purchased by the respondent. Since, the petitioner had never been engaged by the respondent, the question of termination of his services did not arise. It was denied that the respondent had not complied with the provisions of Sections 25-F, 25-G and 25-H of the Act. The respondent, thus, prays for the dismissal of the claim.

4. Arguments of the learned counsel for the respondent heard and records gone through.

5. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent during February, 2016 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis on muster roll as a labourer in the year 2012. It was also his claim that he had completed 240 days in each calendar year. A plea was also taken to the effect that the respondent had not adhered to the principle of 'last come first go', as persons junior to the petitioner were retained and that fresh hands had also been engaged. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

6. However, when the case was listed for filing of rejoinder and documents by the petitioner for 05.9.2019, neither he nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

7. It will be apt at this stage to take note of the relevant provisions of the Act. Section 2 (b) of the Act defines the Award as under:—

"(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;".

8. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National

Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called "The Industrial Disputes (Central) Rules, 1957." Rule 10-B (9) reads thus:—

"10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex parte and decide the reference application in the absence of the defaulting party."

9. Rule 22 reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

10. The State of Himachal Pradesh has also framed rules called "The Industrial Disputes Rules, 1974." Rule 25 thereof reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

11. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to adduce evidence or argue his case.

12. In the instant case, neither the petitioner nor his counsel had put in appearance before this Tribunal on 5.9.2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

13. Since, it is disputed by the respondent that the services of the petitioner had been engaged on daily wage basis, so firstly it was required of the petitioner to prove on record that he had been engaged by the respondent on daily waged basis and then to establish on record, as per the reference, that the termination of his services in the year 2016 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but his allegations therein have remained a mere saying on record, as no evidence in support thereof has been led by him. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief, as claimed for in the statement of claim.

14. In the light of what has been discussed hereinabove, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No.	: 35/2018
Date of Institution	: 19.4.2018
Date of Decision	: 05.09.2019

Shri Rasilu s/o Shri Nudhu, r/o Village Banotu, P.O. Sahoo, Tehsil & District Chamba, H.P.
. Petitioner.

Versus

The General Manager, M/S Sahoo Hydro Power Project, Village Kurtha, P.O. Sahoo,
Tehsil & District Chamba, H.P. *. Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: None for the petitioner
For the Respondent	: Shri Dharam Malhotra, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Rasilu s/o Shri Nudhu, r/o Village Banotu, P.O. Sahoo, Tehsil & District Chamba, H.P. during February, 2016 (as alleged by the workman) by the General Manager, M/s Sahoo Hydro Power Project, Village Kurtha, P.O. Sahoo, Tehsil & District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was initially engaged as a daily waged labourer on muster roll basis by the respondent without any appointment letter in the year 2012. He thereafter had worked continuously with the respondent

for many years. It was undertaken by the respondent that the company would provide a job for forty years to the petitioner, as his land was used in the construction of the hydro project. However, during February, 2016 his services were orally terminated by the respondent. He being a poor man, having no source of income, had approached the respondent many a times to re-engage him, but without success. No one month's notice in writing indicating the reasons for retrenchment had been given to him, nor any retrenchment compensation was paid. The respondent had violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). While terminating his services, the respondent had also not followed the principle of 'last come first go', as persons junior to him were retained in service continuously without any breaks and they have also been regularized. No opportunity of re-employment was ever given to him. Provisions of Sections 25-G and 25-H of the Act were also violated by the respondent. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, locus standi, non-joinder and misjoinder of parties, suppression of material facts and cause of action. The contents of the petition were denied on merits. It was asserted that the petitioner had never been engaged as a labourer by the respondent. No land of his had ever been acquired or purchased by the respondent. So, providing him a job for forty years did not arise. Only those families were provided the job, whose lands had been acquired/purchased by the respondent. Since, the petitioner had never been engaged by the respondent, the question of termination of his services did not arise. It was denied that the respondent had not complied with the provisions of Sections 25-F, 25-G and 25-H of the Act. The respondent, thus, prays for the dismissal of the claim.

4. Arguments of the learned counsel for the respondent heard and records gone through.

5. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent during February, 2016 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis on muster-roll as a labourer in the year 2012. It was also his claim that he had completed 240 days in each calendar year. A plea was also taken to the effect that the respondent had not adhered to the principle of 'last come first go', as persons junior to the petitioner were retained and that fresh hands had also been engaged. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

6. However, when the case was listed for filing of rejoinder and documents by the petitioner for 05.9.2019, neither he nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

7. It will be apt at this stage to take note of the relevant provisions of the Act. Section 2 (b) of the Act defines the Award as under:—

"(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;".

8. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National

Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called "The Industrial Disputes (Central) Rules, 1957." Rule 10-B (9) reads thus:—

"10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex parte and decide the reference application in the absence of the defaulting party."

9. Rule 22 reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.— If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

10. The State of Himachal Pradesh has also framed rules called "The Industrial Disputes Rules, 1974." Rule 25 thereof reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

11. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to adduce evidence or argue his case.

12. In the instant case, neither the petitioner nor his counsel had put in appearance before this Tribunal on 5.9.2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

13. Since, it is disputed by the respondent that the services of the petitioner had been engaged on daily wage basis, so firstly it was required of the petitioner to prove on record that he had been engaged by the respondent on daily waged basis and then to establish on record, as per the reference, that the termination of his services in the year 2016 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but his allegations therein have remained a mere saying on record, as no evidence in support thereof has been led by him. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief, as claimed for in the statement of claim.

14. In the light of what has been discussed hereinabove, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 25/2018

Date of Institution : 28.3.2018

Date of Decision : 06.09.2019

Shri Man Singh s/o Shri Jaram Singh, r/o Village Banotu, P.O. Sahoo, Tehsil & District Chamba, H.P. . *Petitioner.*

Versus

The General Manager, M/s Sahoo Hydro Power Project, Village Kurtha, P.O. Sahoo, Tehsil & District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For the Respondent : Shri Dharam Malhotra, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Man Singh s/o Shri Jaram Singh, r/o Village Banotu, P.O. Sahoo, Tehsil & District Chamba, H.P. during February, 2016 (as alleged by the workman) by the General Manager, M/S Sahoo Hydro Power Project, Village Kurtha, P.O. Sahoo, Tehsil & District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was initially engaged as a daily waged labourer on muster roll basis by the respondent without any appointment letter in the year 2012. He thereafter had worked continuously with the respondent

for many years. It was undertaken by the respondent that the company would provide a job for forty years to the petitioner, as his land was used in the construction of the hydro project. However, during October, 2015 his services were orally terminated by the respondent. He being a poor man, having no source of income, had approached the respondent many a times to re-engage him, but without success. No one month's notice in writing indicating the reasons for retrenchment had been given to him, nor any retrenchment compensation was paid. The respondent had violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). While terminating his services, the respondent had also not followed the principle of 'last come first go', as persons junior to him were retained in service continuously without any breaks and they have also been regularized. No opportunity of re-employment was ever given to him. Provisions of Sections 25-G and 25-H of the Act were also violated by the respondent. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, locus standi, non-joinder and misjoinder of parties, suppression of material facts and cause of action. The contents of the petition were denied on merits. It was asserted that the petitioner had never been engaged as a labourer by the respondent. No land of his had ever been acquired or purchased by the respondent. So, providing him a job for forty years did not arise. Only those families were provided the job, whose lands had been acquired/purchased by the respondent. Since, the petitioner had never been engaged by the respondent, the question of termination of his services did not arise. It was denied that the respondent had not complied with the provisions of Sections 25-F, 25-G and 25-H of the Act. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Arguments of the learned counsel for the respondent heard and records gone through.

6. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent during October, 2015 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis on muster roll as a labourer in the year 2012. It was also his claim that he had completed 240 days in each calendar year. A plea was also taken to the effect that the respondent had not adhered to the principle of 'last come first go', as persons junior to the petitioner were retained and that fresh hands had also been engaged. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

7. However, when the case was listed for filing of the documents and for settlement of issues for 05.9.2019, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

8. It will be apt at this stage to take note of the relevant provisions of the Act. Section 2 (b) of the Act defines the Award as under:—

"(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;".

9. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit. The Central Government has framed rules called "The Industrial Disputes (Central) Rules, 1957." Rule 10-B (9) reads thus:—

"10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex parte and decide the reference application in the absence of the defaulting party."

10. Rule 22 reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

11. The State of Himachal Pradesh has also framed rules called "The Industrial Disputes Rules, 1974." Rule 25 thereof reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

12. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to adduce evidence or argue his case.

13. In the instant case, neither the petitioner nor his counsel had put in appearance before this Tribunal on 6.9.2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

14. Since, it is disputed by the respondent that the services of the petitioner had been engaged on daily wage basis, so firstly it was required of the petitioner to prove on record that he had been engaged by the respondent on daily waged basis and then to establish on record, as per the reference, that the termination of his services in the year 2015 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but his allegations therein have remained a mere saying on record, as no evidence in support thereof has been led by him. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief, as claimed for in the statement of claim.

15. In the light of what has been discussed hereinabove, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for

publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref No. : 221/2016

Date of Institution : 11.4.2016

Date of Decision : 06.09.2019

Shri Hari Singh s/o Shri Gian Chand, r/o Village and Post Office Kothi, Tehsil Pangi, District Chamba, H.P. . . Petitioner.

Versus

The Executive Engineer, HPPWD Division Killar, Tehsil Pangi, District Chamba, H.P. . . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Uday Singh, DDA

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Hari Singh s/o Shri Gian Chand, r/o Village and Post Office Kothi, Tehsil Pangi, District Chamba, H.P. during October, 2005 by the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 6 years vide demand notice dated-nil-received on 31.10.2011, without

complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 6 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster roll basis, without any appointment letter, in the year 1997. He continuously worked with intermittent breaks until October, 2005 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of 'first come last go'. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). At the time of his termination, the persons junior to him were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Shri Suraj Ram, Chunku, Budhi Ram and Dev Raj. He was not given an opportunity of reemployment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1998 and who remained engaged till the year 2005. He had worked intermittently with the department and had left the job of his own sweet will, and had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per the orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of his own, there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2005, he certainly would have raised an industrial dispute, but the same was raised by him before the Labour Officer only in the year 2012, i.e. after about 07 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages. The respondent, thus, prays for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 14.6.2018:

1. Whether termination of service of petitioner by the respondent during October, 2005 is/was legal and justified as alleged? . .OPP.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged?. .OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged?. .OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Yes
Issue No. 2	: Negative
Issue No. 3	: No
Issue No. 4	: No
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in October, 2005 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in the year 1997 and had continuously worked as such till the year 2005. It was also his claim that fictional breaks were given to him by the department so

that he could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of October, 2005. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

16. The petitioner in paragraph 10 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, S/Shri Suraj Ram, Chuku Ram, Budhi Ram and Dev Raj, who were junior to him, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and

exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3 :

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

20. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 631/2016

Date of Institution : 01.9.2016

Date of Decision : 06.09.2019

Smt. Sato Devi w/o Shri Inder Singh, r/o Village Bishthow, P.O. Luj, Tehsil Pangi,
District Chamba, H.P. . .Petitioner.

Versus

The Executive Engineer, HPPWD Division Killar, Tehsil Pangi, District Chamba, H.P.
Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Uday Singh, DDA

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Smt. Sato Devi w/o Shri Inder Singh, r/o Village Bishthow, P.O. Luj, Tehsil Pangi, District Chamba, H.P. during September, 2004 by the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P., who had worked as beldar on daily wages and has raised her industrial dispute after more than 7 years *vide* demand notice dated 21.12.2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was initially engaged as a daily waged labourer on muster roll basis by the respondent without any appointment letter in the year 2012. He thereafter had worked continuously with the respondent for many years. It was undertaken by the respondent that the company would provide a job for forty years to the petitioner, as his land was used in the construction of the hydro project. However, during February, 2016 his services were orally terminated by the respondent. He being a poor man, having no source of income, had approached the respondent many a times to re-engage him, but without success. No one month's notice in writing indicating the reasons for retrenchment had been given to him, nor any retrenchment compensation was paid. The respondent had violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). While terminating his services, the respondent had also not followed the principle of 'last come first go', as person junior to him were retained in service continuously without any breaks and they have also been regularized. No opportunity of re-employment was ever given to him. Provisions of Sections 25-G and 25-H of the Act were also violated by the respondent. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, locus standi, non-joinder and misjoinder of parties, suppression of material facts and cause of action. The contents of the petition were denied on merits. It was asserted that the petitioner had never been engaged as a labourer by the respondent. No land of his had ever been acquired or purchased by the respondent. So, providing him a job for forty years did not arise. Only those families were provided the job, whose lands had been acquired/purchased by the respondent. Since, the petitioner had never been engaged by the respondent, the question of termination of his services did not arise. It was denied that the

respondent had not complied with the provisions of Sections 25-F, 25-G and 25-H of the Act. The respondent, thus, prays for the dismissal of the claim.

4. Arguments of the learned counsel for the respondent heard and records gone through.

5. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent during February, 2016 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis on muster-roll as a labourer in the year 2012. It was also his claim that he had completed 240 days in each calendar year. A plea was also taken to the effect that the respondent had not adhered to the principle of 'last come first go', as persons junior to the petitioner were retained and that fresh hands had also been engaged. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

6. However, when the case was listed for filing of rejoinder and documents by the petitioner for 05.9.2019, neither he nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

7. It will be apt at this stage to take note of the relevant provisions of the Act. Section 2 (b) of the Act defines the Award as under:—

"(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;"

8. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit. The Central Government has framed rules called "The Industrial Disputes (Central) Rules, 1957." Rule 10-B (9) reads thus:—

*"10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex parte* and decide the reference application in the absence of the defaulting party."*

9. Rule 22 reads thus:—

*"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."*

10. The State of Himachal Pradesh has also framed rules called "The Industrial Disputes Rules, 1974." Rule 25 thereof reads thus:—

*"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex parte*.— If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend*

or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

11. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to adduce evidence or argue his case.

12. In the instant case, neither the petitioner nor his counsel had put in appearance before this Tribunal on 8.8.2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

13. Since, it is disputed by the respondent that the services of the petitioner had been engaged on daily wage basis, so firstly it was required of the petitioner to prove on record that he had been engaged by the respondent on daily waged basis and then to establish on record, as per the reference, that the termination of his services in the year 2016 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but his allegations therein have remained a mere saying on record, as no evidence in support thereof has been led by him. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief, as claimed for in the statement of claim.

14. In the light of what has been discussed hereinabove, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 51/2017

Date of Institution : 24.1.2017

Date of Decision : 06.09.2019

Shri Devi Chand s/o Shri Duni Chand, r/o Village Kulal, P.O. Mindhal, Tehsil Pangi,
District Chamba, H.P. . .Petitioner.

Versus

The Executive Engineer, IPH Division Pangi at Killar, Tehsil Pangi, District Chamba, H.P.
. Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O. P. Bhardwaj, Adv.

For the Respondent : Sh. Uday Singh, DDA

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Devi Chand s/o Sh. Duni Chand, Village Kulal, P.O. Mindhal, Tehsil Pangi, Distt. Chamba, H.P. during the year 2004, by the Executive Engineer, IPH & HPPWD Division, Pangi at Killar, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis during the year 1999 and thereafter during the year 2001 to 2004 only for 220 days and has raised his industrial dispute *vide* demand notice dated 26/10/2015 after more than 10 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 10 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster roll basis, without any appointment letter, in the year 1996. He continuously worked with intermittent breaks until October, 2005 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘first come last go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of his termination, the persons junior to him were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Shri/Smt. Tek Chand, Bhag Dei, Ram Dei, Dev Raj and Bameshwar Dutt. He was not given an opportunity of reemployment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1999 and who remained engaged till the year 2004. He had worked intermittently with the department and had left the job of his own sweet will, and had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of his own, there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2004, he certainly would have raised an industrial dispute, but the same was raised by him before the Labour Officer only in the year 2015, *i.e.* after about 11 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages. The respondent, thus, prays for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 6.3.2018:

1. Whether termination of the services of the petitioner by the respondent during year, 2004 is/was improper and unjustified as alleged? .OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? .OPP.
3. Whether the petition is not maintainable in the present form as alleged? .OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? .OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: Negative
Issue No. 3	: No
Issue No. 4	: No
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in October, 2005 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in the year 1996 and had continuously worked as such till the year 2005. It was also his claim that fictional breaks were given to him by the department so that he could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1**

SCC 106. it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 2004. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

"25-G. Procedure for retrenchment.— Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

16. The petitioner in paragraph 10 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, S/Shri/Smt. Tek Chand, Bhag Dei, Ram Dei, Dev Raj and Bameshwar Dutt, who were junior to him, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3 :

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

20. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

22. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref No. : 332/2015

Date of Institution : 05.8.2015

Date of Decision : 06.09.2019

Shri Soni Ram s/o Shri Chanew, r/o Village and Post Office Rei, Tehsil Pangi, District Chamba, H.P. .Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Uday Singh, DDA

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Soni Ram s/o Shri Chanew, r/o Village and Post Office Rei, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 02.02.2012 regarding his alleged illegal termination of service during October, 2003 suffers from delay and laches? If not, whether termination of the services of Shri Soni Ram s/o Shri Chanew, r/o Village and Post Office Rei, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during October, 2003 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster roll basis in May, 1994. He continuously worked with intermittent breaks until October, 2003 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘last come first go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of his termination, the persons junior to him were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are Shri Hukkam Chand and twenty six others. He was not given an opportunity of reemployment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of Constitution of India. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1994 and who had worked intermittently with the department until the year 2003 and had left the job of his own sweet will, and had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the

petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner mentioned at serial Nos. 1 to 25 in para No. 4 of the claim petition were appointed as per order of the Labour Court and at serial Nos. 26 & 27 as harness case. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of his own, there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2003, he certainly would have raised an industrial dispute, but the same was raised by him before the Labour Officer only in the year 2011, *i.e.* after about 09 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 17.12.2015:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 02-02-2012 qua his laches as alleged? If so, its effect? *OP*
2. Whether termination of the services of petitioner by the respondent *w.e.f.* October, 2003 is/was illegal and unjustified as alleged? *OPP.*
3. If issue No. 1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? *OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? *OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3	: Negative
Issue No. 4	: No
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 2 and 3 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in October, 2003 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in May, 1994 and had continuously worked as such till October, 2003. It was also his claim that fictional breaks were given to him by the department so that he could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in October, 2003. No mandays chart of the

petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

“25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

16. The petitioner in paragraph 3 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, Shri Hukkam Chand and twenty six others who were junior to him, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 4 :

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 1 :

20. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon’ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

22. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 417/2015

Date of Institution : 10.9.2015

Date of Decision : 06.09.2019

Ms. Chandro Devi d/o Shri Kewal Ram, r/o Village Shoon, P.O. Udeen, Tehsil Pangi, District Chamba, H.P. . . Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. . . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Uday Singh, DDA

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Ms. Chandro Devi D/O Shri Kewal Ram, R/O Village Shoon, P.O. Udeen, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 27.08.2012 regarding her alleged illegal

termination of services during October, 2004 suffers from delay and laches? If not, Whether termination of services of Ms. Chandro Devi D/O Shri Kewal Ram, R/O Village Shoon, P.O. Udeen, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during October, 2004 without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the worker, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged beldar on muster roll basis in May, 1997. She continuously worked with intermittent breaks until October, 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of 'last come first go'. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). At the time of her termination, the persons junior to her were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are Shri Hukkam Chand and twenty six others. She was not given an opportunity of reemployment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of Constitution of India. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petitioner were denied on merits. It has been denied that the services of the petitioner were engaged by the respondent as a daily waged beldar on muster roll basis during May, 1997 and that she had continuously worked with intermittent breaks until October, 2004. It was asserted that the petitioner had never been engaged by the respondent to do any work. The respondent, thus, pray for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 17.5.2016:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 27-08-2012 qua her termination of service during October, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..OPP.
2. Whether termination of the services of petitioner by the respondent during October, 2004 is/was illegal and unjustified as alleged? ..OPP.

3. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? . *OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? . *OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and her evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, she had failed to lead her evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	: No
Issue No.2	: No
Issue No.3	: Negative
Issue No.4	: No
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 2 and 3 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that her services were illegally and unjustifiably terminated by the respondent in October, 2004 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in May, 1997 and had continuously worked as such till October, 2004. It was also her claim that fictional breaks were given to her by the department so that she could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to her were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had never been engaged by the respondent so the question of completing 160 days did not arise, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that she had completed working for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

12. Section 25-B of the Act defines “continuous service”. In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, she will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that she had worked for 160 days in preceding twelve calendar months prior to her alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

13. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of her alleged termination, which as per the reference took place in October, 2004. No mandays chart of the petitioner is there on the file to establish that she had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of her alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

14. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

“25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

15. The petitioner in paragraph 4 of the statement of claim maintained that at the time her services were terminated, the workmen, namely, Shri Hukkam Chand and twenty six others who were junior to her, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to her were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

16. It is not the case of the petitioner that after her alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

17. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 4 :

18. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 1 :

19. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief :

21. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 428/2016

Date of Institution : 19.8.2016

Date of Decision : 06.09.2019

Smt. Anita Kumari w/o Shri Ramesh Kumar, r/o Village Hillour, P.O. Sahali, Tehsil Pangi, District Chamba, H.P. . Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Killar (Pangi), District Chamba, H.P. . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Uday Singh, DDA

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of between Smt. Anita Kumari, w/o Shri Ramesh Kumar, r/o Village Hillour, P.O. Sahali, Tehsil Pangi, District Chamba, H.P. during year, 2004 by the Executive Engineer, H.P.P.W.D. Killar Division (Pangi) District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas she has raised the industrial dispute vide demand notice dated 27/08/2012 after lapse of more than 8 years. If not, keeping in view delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged beldar on muster roll basis in the year, 1996. She continuously worked with intermittent breaks until the year 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘last come first go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of her termination, the persons junior to her were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are Shri Hukkam Chand and twenty seven others. She was not given an opportunity of reemployment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the

respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of Constitution of India. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petitioner were denied on merits. It has been denied that the services of the petitioner were engaged by the respondent as a daily waged beldar on muster-roll basis during the year 1996 and that she had continuously worked with intermittent breaks until the year 2004. It was asserted that the petitioner had never been engaged by the respondent to do any work. The respondent, thus, pray for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 23.5.2018:

1. Whether termination of the services of the petitioner by the respondent during year, 2004 is/was improper and unjustified as alleged? . .OPP.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . .OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and her evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, she had failed to lead her evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No. 2 : Negative

Issue No. 3 : No

Issue No. 4 : No

Relief

: Claim petition dismissed *vide* operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that her services were illegally and unjustifiably terminated by the respondent in the year 2004 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in the year 1996 and had continuously worked as such till the year 2004. It was also her claim that fictional breaks were given to her by the department so that she could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to her were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had never been engaged by the respondent so the question of completing 160 days did not arise, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that she had completed working for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

12. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, she will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that she had worked for 160 days in preceding twelve calendar months prior to her alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

13. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of her alleged termination, which as per the reference took place in the year 2004. No mandays chart of the petitioner is there on the file to establish that she had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of her alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

14. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

“25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

15. The petitioner in paragraph 4 of the statement of claim maintained that at the time her services were terminated, the workmen, namely, Shri Hukkam Chand and twenty seven others who were junior to her, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to her were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

16. It is not the case of the petitioner that after her alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

17. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3 :

18. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

19. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief :

21. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no

order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 375/2016

Date of Institution : 02.6.2016

Date of Decision : 06.09.2019

Smt. Neel Dei w/o Shri Shiv Charan, r/o Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. .Petitioner.

Versus

The Executive Engineer, I.& P.H. Division Pangi at Killar, Tehsil Pangi, District Chamba, H.P. .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Uday Singh, DDA

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Smt. Neel Dei w/o Sh. Shiv Charan, Village Kuthal, P.O. Sach, Tehsil Pangi, Distt. Chamba, H.P. during 9/2004 by the Executive Engineer, I &PH Division, Pangi Killar (Pangi), Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 616 days during the year 1997 to 2004 and has raised her industrial dispute *vide* demand notice dated 27/8/2012 after about 8 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the year 1997 to 2004 and delay of more than 8 years in raising the industrial dispute,

what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged beldar on muster roll basis in the year, 1997. She continuously worked with intermittent breaks until September, 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of 'last come first go'. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). At the time of her termination, the persons junior to her were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are Shri Hukkam Chand and twenty seven others. She was not given an opportunity of reemployment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of Constitution of India. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1997 and who had worked intermittently with the department until the year 2004 and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner mentioned at serial Nos. 1 to 24, 26 & 28 in para No. 4 of the claim petition were appointed as per order of the Labour Court and at serial Nos. 25 & 27 as harness case. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2004, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2012, i.e. after about 08 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 07.3.2018:

1. Whether termination of the services of the petitioner by the respondent during Sept., 2004 is/was improper and unjustified as alleged? . .OPP.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the petition is not maintainable in the present form as alleged? . .OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? . .OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and her evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, she had failed to lead her evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: Negative
Issue No. 3	: No
Issue No. 4	: No
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that her services were illegally and unjustifiably terminated by the respondent in the year 2004 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in the year 1997 and had continuously worked as such till the

year 2004. It was also her claim that fictional breaks were given to her by the department so that she could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to her were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that she had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, she will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that she had worked for 160 days in preceding twelve calendar months prior to her alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of her alleged termination, which as per the reference took place in the year 2004. No mandays chart of the petitioner is there on the file to establish that she had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of her alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

16. The petitioner in paragraph 3 of the statement of claim maintained that at the time her services were terminated, the workmen, namely, Shri Hukkam Chand and twenty seven others who were junior to her, were retained in service by the respondent. This averment has not been

established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to her were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. It is not the case of the petitioner that after her alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3 :

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

20. In *Aiayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief :

22. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 485/2016

Date of Institution : 22.8.2016

Date of Decision : 06.09.2019

Shri Ved Viyas s/o Shri Uday Chand, r/o V.P.O. Rei, Tehsil Pangi, District Chamba, H.P.
. .Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Killar (Pangi) District Chamba, H.P.
. .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Uday Singh, DDA

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Ved Viyas s/o Shri Uday Chand, r/o V.P.O. Rei, Tehsil Pangi, District Chamba, H.P. during 1999 by the Executive Engineer, HP.PWD Division, Killar, District Chamba, H.P., who has worked as beldar on daily wages basis and has raised his industrial dispute after more than 13 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 147, 88 and 26 days during years 1997, 1998 and 1999 respectively and delay of more than 13 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster roll basis in the year 1994. He continuously worked with intermittent breaks until October, 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘last come first go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of

retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). At the time of his termination, the persons junior to him were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are Shri Jai Dass and twenty two others. He was not given an opportunity of reemployment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of Constitution of India. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1997 and who had worked intermittently with the department until the year 1999 and had left the job of his own sweet will, and had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner mentioned at serial Nos. 1 to 19 and 21 & 23 in para No. 4 of the claim petition were appointed as per order of the Labour Court and at serial Nos. 20 & 22 as harness case. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of his own, there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 1999, he certainly would have raised an industrial dispute, but the same was raised by him before the Labour Officer only in the year 2013, i.e. after about 14 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 12.6.2018:

1. Whether termination of services of petitioner by the respondent during year, 1999 is/was legal and justified as alleged? . .OPP.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.

4. Whether the claim petition is bad on account of delay and laches as alleged?
. . OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : Negative

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition dismissed *vide* operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in October, 2004 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in the year 1994 and had continuously worked as such till October, 2004. It was also his claim that fictional breaks were given to him by the department so that he could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines “continuous service”. In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 1999. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

“25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

16. The petitioner in paragraph 4 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, Shri Jai Dass and twenty two others who were junior to him, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3 :

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

20. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief :

22. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 297/2016

Date of Institution : 12.5.2016

Date of Decision : 06.09.2019

Shri Dev Singh s/o Shri Hari Saran, r/o Village Kothi, P.O. Kothi Kironi, Tehsil Pangi, District Chamba, H.P. . .Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Uday Singh, DDA

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Dev Singh s/o Sh. Hari Saran, Village Kothi, P.O. Kothi Kironi, Tehsil Pangi, Distt. Chamba, H.P. from 1999 by the Executive Engineer HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 128 days from 1997 to 1999 and has raised his industrial dispute vide demand notice dated 2/6/2012 after more than 11 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster-roll basis in the year 1994. He continuously worked with intermittent breaks until September, 2003 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘last come first go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of his termination, the persons junior to him were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are Shri Hukkam Chand and twenty seven others. He was not given an opportunity of reemployment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of Constitution of India. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petitioner were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1997 and who had worked intermittently with the department until the year 2003 and had left the job of his own sweet will, and had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner mentioned at serial Nos. 1 to 24 and 26 & 28 in para No. 4 of the claim petition were appointed as per order of the Labour Court and at serial Nos. 25 & 27 as harness case. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of his own, there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2003, he certainly would have raised an industrial dispute, but the same was raised by him before the Labour Officer only in the year 2013, *i.e.* after about 10 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages. The respondent, thus, prays for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 04.10.2017:

1. Whether termination of services of the petitioner by the respondent from 1999 is/was improper and unjustified as alleged? .OPP.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? .OPP.
3. Whether the claim petition is not maintainable in the present form? .OPR.
4. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged? .OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: Negative
Issue No. 3	: No
Issue No. 4	: No
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in September, 2003 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged on daily wage basis in the year 1994 and had continuously worked as such till September, 2003. It was also his claim that fictional breaks were given to him by the department so that he could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has

been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 1999. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

16. The petitioner in paragraph 3 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, Shri Hukkam Chand and twenty seven others who were junior to him, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3 :

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

20. In *Aiayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the

ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

22. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 448/2016

Date of Institution : 20.8.2016

Date of Decision : 06.09.2019

Shri Jeet Singh s/o Shri Jai Dayal, r/o Village Gudes, P.O. Khushnagri, Tehsil Churah, District Chamba, H.P. . Petitioner.

Versus

The Executive Engineer, HPPWD Killar Division, (Pangi), Tehsil Pangi, District Chamba, H.P. . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Dharam Malhotra, Adv.

For the Respondent

: Sh. Uday Singh, DDA

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Jeet Singh s/o Shri Ram Dayal, r/o Village Gudes, P.O. Kushinagri, Tehsil Churah, District Chamba, H.P. During year 2005 by the Executive Engineer, H.P.P.W.D. Killar Division (Pangi), Tehsil Pangi, District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas he has raised the dispute vide demand notice dated 05/03/2013 after lapse of 7 years. If not, keeping in view delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed/engaged as a beldar *w.e.f.* August, 2001. He continuously worked without breaks. His services had been disengaged without issuing any notice or reason on 1st November, 2004, despite availability of work and funds. The respondent had engaged person juniors to him from the year 2005 to 2014 without engaging the petitioner despite repeated request. The names of the juniors, who were retained in service by the respondent are Sh. Gautam Singh, Shri Dev Raj and Shri Sham Lal. The respondent had not followed the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). The petitioner had raised his demand notice on 21.4.2015 before the Labour Officer, but without success. The petitioner has completed more than 160 days preceding twelve calendar months. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petitioner were denied on merits. It has been denied that the services of the petitioner were engaged by the respondent as a daily waged beldar on muster roll basis during August, 2001 and that he had continuously worked with the respondent until 1st November, 2004. It was asserted that the petitioner had never been engaged by the respondent to do any work. The respondent, thus, pray for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 04.10.2018:

1. Whether termination of service of petitioner by the respondent during year, 2005 is/was illegal and unjustified as alleged? . .OPP.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form? . .OPR.

4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . .OPR.

Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No. 2 : Negative

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition dismissed *vide* operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent on 1st November, 2004 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in August, 2001 and had continuously worked as such till the year 2004. It was also his claim that fictional breaks were given to him by the department so that he could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had never been engaged by the respondent so the question of completing 160 days did

not arise, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

12. Section 25-B of the Act defines “continuous service”. In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

13. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 2005. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

14. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

“25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

15. The petitioner in paragraph 3 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, Shri Gautam Singh, Shri Dev Raj and Shri Sham Lal, who were junior to him were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/ department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

16. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

17. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3 :

18. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

19. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief :

21. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 242/2016

Date of Institution : 21.4.2016

Date of Decision : 06.09.2019

Shri Khem Raj s/o Shri Tej Lal, r/o Village Ganwas, P.O. Sural, Tehsil Pangi, District Chamba, H.P. .Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Pangi at Killar, Tehsil Panig, District Chamba, H.P. .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For the Respondent : Shri Uday Singh Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Khem Raj s/o Sh. Tej Lal, Village Ganwas, P.O. Sural, Tehsil Pangi, Distt. Chamba, H.P. during 9/2004 by the Executive Engineer, HPPWD Division, Pangi at Killar Tehsil Pangi District Chamba, H.P. who had worked as beldar on daily wages basis only for 1221 days during the year 1990 to 2004 and has raised his industrial dispute *vide* demand notice dated 26/12/2011 after more than 7 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period from 1990 to 2004 and delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster roll basis, without any appointment letter, in the year 1990. He continuously worked with intermittent breaks until October, 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘first come last go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of his termination, the persons junior to him were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Shri/Smt. Tek Chand, Baldev, Trilok Chand, Hari Ram, Dev Raj, Sher Singh, Raj Kumar and Bameshwar Dutt. He was not given an opportunity of reemployment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petitioner were denied on merits. It has been denied that the services of the petitioner were engaged by the respondent as a daily waged beldar on muster roll basis during the year 1990 and that he had continuously worked with intermittent breaks until October, 2004. It was asserted that the petitioner had never been engaged by the respondent to do any work. The respondent, thus, pray for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 26.4.2019:

1. Whether termination of services of the petitioner by the respondent during September, 2004 is/was illegal and unjustified, as alleged? .OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? .OPP.
3. Whether the claim petition is not maintainable, as alleged? .OPR.
4. Whether the claim petition is bad on account of delay and laches, as alleged? .OPR.

Relief.

6. Arguments of the learned Deputy District Attorney for the respondent heard and records gone through.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Negative

Issue No. 2 : Negative

Issue No. 3 : No

Issue No. 4 : No

Relief. : Claim petition dismissed *vide* operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

8. Both these issues are inter-related and inter-connected, hence jointly taken for adjudication.

9. The case was listed for evidence of the petitioner for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex parte*.

10. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity sake). Section 2 (b) of the Act defines the Award as under:—

"(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;".

11. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit. The Central Government has framed rules called "The Industrial Disputes (Central) Rules, 1957." Rule 10-B (9) reads thus:—

"10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex parte* and decide the reference application in the absence of the defaulting party."

12. Rule 22 reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

13. The State of Himachal Pradesh has also framed rules called "The Industrial Disputes Rules, 1974." Rule 25 thereof reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

14. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to adduce evidence or argue his case.

15. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

16. As per the pleadings, it was firstly required of the petitioner to establish on record that he had been engaged as a daily waged beldar on muster roll basis by the respondent, as the same

has been disputed in the reply by the respondent. Then, it was for the petitioner to prove on record that the termination of his services during September, 2004 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but his allegations therein have remained a mere saying on record, as no evidence in support thereof was led by him. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal.

17. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No.3 :

18. No evidence to prove this issue in the affirmative has been led by the respondent. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

19. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20 In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief :

21. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 196/2015

Date of Institution : 04.05.2015

Date of Decision : 09.09.2019

Shri Girdhari Lal s/o Shri Mangtu Ram, r/o Village and Post Office Reur, Tehsil Sadar, District Mandi, H.P. *Petitioner.*

Versus

Executive Engineer, I.& P.H. Division, Mandi, District Mandi, H.P. *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. B.C. Sharma, Adv.

For the Respondent : Smt. Navina Rahi, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Girdhari Lal s/o Shri Mangtu Ram, r/o Village and Post Office Reur, Tehsil Sadar, District Mandi, H.P. before the Executive Engineer, I. & P.H. Division, Mandi, District Mandi, H.P. *vide* demand notice dated 06.04.2010 regarding his alleged illegal termination of service during December, 1985 suffers from delay and laches? If not, Whether termination of the services of Shri Girdhari Lal s/o Shri Mangtu Ram, r/o Village and Post Office Reur, Tehsil Sadar, District Mandi, H.P. during December, 1985 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. After the receipt of the aforesigned reference, a corrigendum dated 9th March, 2018 was received from the appropriate Government which reads as under:

“Whereas, a reference has been made to the Ld. Labour Court-cum-Industrial Tribunal, Dharamshala, District Kangra, H.P. *vide* notification of even No. dated 21-04-2015 for its legal adjudication. However, inadvertently the correct facts could not be mentioned about the date of termination in the said notification. Therefore, the same may be read as “December, 1987” instead of “December, 1985”.

3. The case of the petitioner, as it emerges from the statement of claim is that he was engaged on daily waged basis as a beldar in IPH Sub Divisions No. II, Mandi, H.P. under Division Mandi, H.P. *w.e.f.* January, 1985 and had worked until 20.12.1987 continuously with a

minimum of 240 days in each calendar year. Notional breaks had been given to the petitioner by the respondent on the pretext that work for the petitioner was not available in the department, but as and when the work would be available, he would be re-engaged. The petitioner had visited many a times the office of the respondent regarding his re-engagement, but to no avail. New workmen, namely, Shri Uttam Chand and Shri Sita Ram were engaged by the respondent/department as beldars but the petitioner was ignored without following the proper procedure of law. After his disengagement the petitioner had made many representations but without success. The respondent/department had violated the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was given to the petitioner and the principle of 'last come first go' had not been adhered to by the respondent. The names of the juniors who were similarly situated are S/Sh. Roop Lal, Krishan Chand, Roshan Lal, Uttam Chand and Sita Ram. The disengagement of the petitioner was wrong, illegal and unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

4. On notice, the respondent appeared. Reply was filed taking preliminary objections regarding lack of maintainability and that the petition is bad on the ground of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner had worked intermittently *w.e.f.* May, 1985 to December, 1985 with the respondent and thereafter he had left the job of his own sweet will. It was denied that the petitioner had worked with the respondent *w.e.f.* January, 1985 until 20.12.1987. He has not completed 240 days in any calendar year. He had never visited the office of the respondent with regard to his re-engagement. It was admitted that the petitioner was engaged as a daily waged beldar in Lift Water Supply Scheme Chowki Chandran and had worked intermittently until December, 1985. The petitioner had been informed by the concerned Junior Engineer to work at the Store in IPH Section Ratti. But despite that information the petitioner had left the job of his own sweet will. No junior to the petitioner had been engaged by the respondent after issuance of letter dated 10.7.1996. No provision of the Act has been violated by the respondent. Since the petitioner was not a continuous workman with 240 days as required under Section 25-B of the Act, no notice under Section 25-F of the Act was required to be issued to him. The petitioner was never disengaged by the respondent. The respondent, thus, prays for the dismissal of the claim.

5. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 21.3.2018:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 06-04-2010 qua his termination of service during December, 1987 by respondent suffers from the vice of delay and latches as alleged? . .OPP.
2. Whether termination of the services of petitioner by the respondent during December, 1987 is/was illegal and unjustified as alleged? . .OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
4. Whether the claim petition is not maintainable in the present form as alleged? . OPR.

Relief.

7. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Girdhari Lal appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated nil as Ex.PW1/B, copy of mandays chart as Ex.PW1/C and copy of letter dated 10.7.1996 as Ex.PW1/D. The petitioner also examined one Shri Kanku Ram as PW2, who tendered in evidence his affidavit Ex.PW2/A. Shri Arun Sharma (respondent) appeared as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart as Ex.RW1/B, copy of year-wise mandays of the workers as Ex.RW1/C and copy of letter dated 17.12.1987 as Ex.RW1/D.

8. Arguments of the learned counsel for the petitioner and learned Deputy District Attorney for the respondent heard and records gone through.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Negative

Issue No. 2 : Partly yes

Issue No. 3 : Lump sum compensation of ` 25,000/-

Issue No. 4 : Not pressed

Relief : Petition is partly allowed awarding lump sum compensation of ` 25,000/- as per the operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

11. Shri Girdhari Lal (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he had been engaged by the department in October, 1985. He denied that he had worked intermittently from May, 1985 upto December, 1985. He further denied that thereafter he had left the job. He also denied that from January, 1985 to December, 1987 he had not worked. Further, he denied that he had never been removed nor given breaks by the department. It was also denied by him that he had not worked for 240 days or more in any year. He owns one bigha of land, which he cultivates.

12. PW2 Shri Kanku Ram in his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, has endorsed and supported the case of the petitioner.

In the cross-examination, he admitted that the petitioner had worked from May, 1985 till December, 1985. Thereafter stated that he had worked upto December, 1987. He categorically denied that the petitioner had not worked after December, 1985. He also denied that no junior to the petitioner had been kept at work by the department.

13. Ex. PW1/B is the copy of letter relating to removal from service issued by the Assistant Engineer, I&PH Division Rati to the petitioner.

14. Ex. PW1/C is the copy of working details of the petitioner.

15. Ex.PW1/D is the copy of letter dated 10.7.1996 regarding removal from service.

16. Conversely, Shri Arun Sharma, Executive Engineer, I& PH Division Mandi (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he admitted that Ex.PW1/C has been issued by their department. He also admitted that as per Ex.PW1/B the petitioner had only worked until December, 1985. He further admitted that as per Ex.PW1/C work had been done by the petitioner in the years 1986-87. Ex.PW1/C bears the signatures of Assistant Engineer. Further, he admitted that in the year 1986 Shri Roop Lal, in the year 1994 Shri Sita Ram and in the year 1995 Shri Uttam Chand had been engaged as beldars by the department. It was also admitted by him that no notice had been issued by the department to the petitioner that he had left the work and that he should report back. He specifically denied that the petitioner had intentionally been given breaks and also removed from work.

17. Ex.RW1/B is the copy of mandays chart pertaining to the petitioner.

18. Ex.RW1/C is the copy of year-wise mandays of daily waged workers relating to Shri Krishan Chand and five others.

19. Ex.RW1/D is the copy of letter relating to removal from service issued by the Assistant Engineer, I&PH Division Rati to the petitioner (which corresponds to Ex.PW1/B).

20. The engagement of the petitioner as a daily waged beldar is not in dispute. The respondent as per his pleadings and ocular evidence clearly admitted that the petitioner had been engaged as a daily waged beldar. It was claimed by the petitioner that he had been initially engaged in May, 1985 and that he had worked as such until December, 1987. However, the respondent claimed that the petitioner had worked intermittently w.e.f. May, 1985 to December, 1985. Placed on record by the respondent is the copy of mandays chart as Ex.RW1/B relating to the petitioner. Its perusal reveals that the petitioner had been engaged by the respondent in the month of May, 1985 for the first time as a daily waged beldar and that he had worked as such until December, 1985. However, the petitioner has produced on record a copy of detail of his working days as Ex.PW1/C. This document is not disputed by the respondent. RW1 Shri Arun Sharma (respondent) in his substantive evidence clearly admitted that Ex.PW1/C has been issued by their department and which bears the signatures of the Assistant Engineer. Its perusal discloses that the petitioner had also worked with the department in the years 1986 and 1987. RW1 Shri Arun Sharma also clearly admitted that as per Ex.PW1/C the petitioner had also worked in the years 1986-87. Now, the first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that he had been disengaged by the respondent on the pretext that there was no work available for him in the department, whereas the stand taken by the respondent is that after December, 1985, the petitioner had left the job of his own.

21. It is well known that the plea of abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent.

Simply because a workman fails to report for duty, it cannot be presumed that he has left/ abandoned the job. Mere statement of Shri Arun Sharma (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Then, the admission of the document Ex.PW1/C on the part of RW1 Shri Arun Sharma knocks the very bottom of the stand taken by the respondent that the petitioner had abandoned the job in December, 1985. Be it recorded here at the risk of repetition that as per the document Ex.PW1/C, the petitioner is shown to have worked in the department in the years 1986 and 1987 also. Further, no notice has been placed and exhibited on record by the respondent to show that the petitioner had been called upon by the respondent to resume the duties after he allegedly left the same. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri Arun Sharma (RW1) clearly admitted that no notice had been served upon the petitioner by the department of his leaving the job and to resume his duties. Faced with the situation, it was contended by the learned Deputy District Attorney for the respondent that it was not required of the respondent to proceed against the workman by way of a domestic inquiry. True it is that the petitioner, a daily wager, was not amenable to the provisions of CCS, (CCA) Rules and as such a domestic inquiry as stipulated therein was not strictly required to be initiated. Nonetheless, absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence, of any such '*animus*' on the part of the petitioner, is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established. So, the claim of the petitioner that his services were orally terminated by the respondent *w.e.f.* December, 1987 has to be accepted as correct on the balance of probability.

22. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of 12 calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. As per the copy of detail of working days Ex. PW1/C, the petitioner had only worked for a total of 16 days from 21.5.1987 to 20.12.1987. Earlier to it from 21.1.1986 to 20.12.1986, the petitioner had worked for a total of 93 days. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

23. Ex. RW1/C is the year-wise mandays of daily waged workers category relating to Shri Shri Krishan Chand and five others. It reveals that Shri Roop Lal was appointed by the respondent in the year 1986 and had become regular on 1st January, 1997. Not only this Shri Arun Sharma (RW1) in his cross-examination admitted that the department had engaged Shri Roop Lal as a beldar in the year 1986. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex.RW1/B is May, 1985 and that the month of termination of his services, as per the reference is December, 1987. There is nothing on record to show that Shri Roop Lal was senior to the petitioner. This indicates that a person junior to the petitioner is still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the junior at the cost of senior is nothing but unfair labour practice.

24. Again, looking to Ex.RW1/C, it reveals that Shri Sita Ram was appointed by the respondent in the year 1994, whereas the services of Shri Uttam Chand were engaged in the year 1995. RW1 Shri Arun Sharma in the cross-examination also admitted this fact. The services of both the aforesigned persons, as per Ex.RW1/C, have been regularized by the department from 4.1.2007 and 31.3.2008 respectively. It, thus, shows that new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged, as no work was available (as

alleged by the respondent) then, why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands or retaining the person junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

25. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

26. While testifying in the Court as PW1, the petitioner has given his age as 55 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns land, which he cultivates. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

27. The learned Deputy District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, wherein it was inter-alia held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

28. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view) will also be advantageous on this aspect of the matter.

29. In case titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh reported in 2013 (136) FLR 893 (SC), it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651, by relying upon the cases of Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177 and

District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC), it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondents only for 312½ days as a non-skilled worker and had not completed 240 days in any year. His services, as per the reference were disengaged in December, 1987 and had raised the industrial dispute by issuance of demand notice after more than ***twenty three years*** i.e. demand notice was given on 6.4.2010. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

30. In view of the discussion and findings arrived at by me above, a lump-sum compensation of '25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issue No. 1 is answered in the negative and decided against the respondent, while issues No. 2 and 3 are answered partly in the affirmative and accordingly decided in favour of the petitioner.

Issue No. 4 :

31. Not pressed.

Relief :

32. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of '25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after completion be consigned to the Record Room.

Announced in the open Court today this 9th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 336/2014

Date of Institution : 19.11.2014

Date of Decision : 11.9.2019

Shri Shyam Lal s/o Shri Ram Pal, r/o Village Sungal, P.O. Binola, Tehsil Sadar, District Bilaspur, H.P. . Petitioner.

Versus

The Secretary, The Bilaspur District Co-operative Federation, Main Market Bilaspur, District Bilaspur, H.P. . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent(s) : Sh. N.L. Thakur, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Shyam Lal s/o Shri Ram Pal, r/o Village Sungal, P.O. Binola, Tehsil Sadar, District Bilaspur, H.P. by the Secretary, The Bilaspur District Co-operative Federation, Main Market Bilaspur, District Bilaspur, H.P. w.e.f. 01.01.2013 without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-worker is entitled to from the above employer?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he was engaged as a daily waged Assistant by the respondent w.e.f. 1.11.2011 and had worked as such continuously until 31.12.2012. His services had orally been terminated on 1.1.2013 without assigning any reason or notice. Before terminating the services of the petitioner, the respondent had not obtained the permission from the higher authorities, which amounts to unfair labour practice. His name was entered in the muster roll register. In the beginning his salary was Rs. 3500/- and lastly he was getting Rs. 5000/- per month. The respondent had engaged simultaneously four workers, namely, S/Sh. Kamal Kumar, Arun Kumar, Shyam Lal (petitioner) and Ashok Kumar. Shri Ashok Kumar was not removed from service, but the services of the petitioner and Shri Kamal Kumar and Shri Arun Kumar had been terminated. No seniority list has been prepared by the respondent. Junior workers have been retained. The principle of ‘last come first go’ was not adhered to by the respondent. The provisions

of Sections 25-B, 25-F (a) and 25-G of the Industrial Disputes Act, 1947 have been violated by the respondent. The petitioner is unemployed. He, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and jurisdiction. The contents of the petition were denied on merits. It was asserted that the petitioner had been appointed on temporary basis till there was transportation work with the federation. The respondent is a federation working under the Registrar, Co-operative Societies. A proper resolution has been passed to terminate the petitioner in the meeting of Board of Directors of the federation. The respondent had not violated any rules and regulations of the Industrial Disputes Act. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 8.10.2015: —

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 01.01.2013 is/was improper and unjustified as alleged? . .OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable in the present form? . .OPR.
4. Whether this court has no jurisdiction to file the present case as alleged? . .OPR.

Relief.

6. Arguments of the learned Authorized Representative for the petitioner and the learned counsel for the respondent heard and records gone through.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Decided accordingly

Issue No. 2 : Decided accordingly

Issue No. 3 : Negative

Issue No. 4 : Negative

Relief. : Petition is partly allowed as per the operative part of the Award.

REASONS FOR FINDINGS

Issue No. 4 :

8. This issue is taken up by me first for discussion as my findings on the same will impinge the outcome of the other issues.

9. While taking me through the provisions of Sections 72 and 73 of the H.P. Co-operative Societies Act, it was contended by the learned counsel for the respondent that since the respondent society is a co-operative society and its employees are governed by the provisions of the H.P. Co-operative Societies Act and the Rules framed there under, the provisions of the Industrial Disputes Act are not applicable. Only the Registrar of the Co-operative Societies is competent to decide the controversy.

10. Per contra, the learned authorized representative for the petitioner urged that the provisions of Sections 72 and 73 of the H.P. Co-operative Societies Act are not attracted in this case. According to him, the respondent society was engaged in a purely commercial venture and was an industry within the meaning of the Industrial Disputes Act. His client being a "workman" and the respondent being an "industry", this Court has the jurisdiction to deal with the matter.

11. To my mind, the contention of the learned authorized representative for the petitioner holds the force and is sustainable. The dispute raised by the petitioner, who was an employee of the respondent society, does not touch the constitution, management or the business of the co-operative society. It is an admitted fact that the services of the petitioner stood terminated by the respondent, though it is claimed by the petitioner that the same were terminated on 1.1.2013, whereas the respondent claims that so was done on 31.12.2012.

12. Strictly speaking, a dispute between a co-operative society and its workman does not relate to the actual business of the co-operative society and, therefore, does not touch its business. A dispute as to the dismissal and claim of reinstatement is not a dispute falling within the jurisdiction of the Registrar of the Co-operative Societies functioning under the H.P. State Co-operative Societies Act. The power that can be exercised by an Industrial Tribunal or Labour Court under the Act cannot be exercised by the Registrar. Consequently, a dispute as regards the dismissal from service cannot be determined by the Registrar. The Registrar of the Co-operative Societies has no power to order the re-instatement of a workman, if he finds the retrenchment/dismissal of the workman to be unjust.

13. In fact, this question is no longer *res integra*. In Bangalore Water Supply and Sewerage Board vs. A Rajappa, 1978 LIC 467 (SC), it has been laid down that the co-operative societies are the industries.

14. Our own Hon'ble High Court in case titled as The Palampur Co-operative Marketing and Consumer Federation Ltd. vs. State of H.P. & others, Latest HLJ 2007 (HP) 713 and The Dehra Friends Co-operative Transport Society vs. The Presiding Officer, Labour Court, CWP No. 781/2005 decided in May, 2007 has laid down that the Industrial Tribunal has the authority, power and jurisdiction to entertain and decide the reference made to it with respect to the employees of the co-operative societies.

15. Reliance has been placed by the learned counsel for the respondent, on the decision of the Hon'ble Apex Court in case titled as R.C. Tiwari vs. M.P. State Co-operative Marketing Federation Ltd. & others (1997) 5 SCC 125. The ratio of this case was considered by our own Hon'ble High Court in The Palampur Co-operative Marketing and Consumer Federation Ltd. case (supra) and it was held that this judgment has no application to the facts and circumstances of the case since the employee straight away had approached the Labour Court and had not approached any authority under the Co-operative Societies Act. Similar is the case here. The petitioner in the present case, being an employee of the respondent, had approached this Tribunal and had not approached any other authority under the Co-operative Societies Act.

16. Reliance was also placed by the learned counsel for the respondent on another decision of the Hon'ble Apex Court in case titled as Himanshu Kumar Vidyarthi and Ors. Vs.

The State of Bihar and Ors. decided on 26th March, 1997. In this case, the Hon'ble Supreme Court held that where persons have not been appointed to the post in accordance with the rules but were engaged on the basis of need of the work, they being temporary employees, their disengagement from service could not be construed to be a retrenchment under the Act. In the case on hand, as per the own admission made by RW1 Shri Mohinder Singh (respondent), the petitioner had been appointed and was being paid the salary by the respondent. Although, he volunteered to state that the petitioner had been engaged temporarily but, however, RW2 Shri H.B. Kaushal, the Ex-Secretary of the respondent was categorical in his substantive evidence that the petitioner had worked continuously from 1st November, 2011 to 31st December, 2012. So, in view of the aforesaid admissions, it cannot be said that the petitioner was a temporary employee, who had been engaged on the basis of need of the work. Hence, the aforesaid judgment also has no application to the facts and circumstances of this case.

17. Reliance was further placed on case titled as Hanuman Sahakari Pani Pravata Sanstha Maryadit and Ors. vs. Ramchandra Bapuso Khade and Ors. 2016 NCJ 523 (NC), wherein it has been held by the Hon'ble National Consumer Disputes Redressal Commission that a dispute related to co-operative society can only be entertained under the Co-operative Societies Act and the Consumer Fora has no jurisdiction to decide the complaint. In the present case a reference has been received by this Tribunal from the appropriate Government, so in my considered view this judgment has also no application to the facts and circumstances of the case.

18. Lastly, reliance was also placed upon the case titled as U.P. Co-operative Spinning Mills vs. Ram Magan, decided on 24th May, 2007 by the Hon'ble Allahabad High Court. In this case, the Hon'ble Allahabad High Court has held that the Labour Court had committed an error in holding that the provisions of the U.P. Industrial Disputes Act was applicable upon an employee of a Co-operative Society, including the workman in question, so the impugned award was quashed. However, in view of the binding precedents laid down by our own Hon'ble High Court in the cases referred to above, wherein it has specifically been held that the Industrial Tribunal has the power and authority to decide the reference and the disputes like the one in question, this judgment, being persuasive in nature cannot be taken note of.

19. It is thus, concluded that this Court has the jurisdiction to hear and decide the case/reference.

20. This issue is decided in favour of the petitioner and against the respondent.

Issues No.1 and 2:

21. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

22. The short and simple case of the petitioner is that the respondent had terminated his services without complying with the provisions of Sections 25-F and 25-G of the Act.

23. In this behalf, the petitioner has examined himself as PW1. He has deposed that the respondent had employed him on 1.11.2011 and that he had continuously worked till 31.12.2012, when his services were orally terminated on 1.1.2013, without any reason or notice. Workers junior to him have been kept and the principle of 'last come first go' has not been followed.

24. The respondent on the other hand has examined the Secretary, Shri Mohinder Singh as RW1. He filed certain documents purportedly in support of the case of the respondent,

which are exhibited as Ex. RW1/B to Ex. RW1/O. In his cross-examination, he has admitted that no notice of retrenchment had been given to the petitioner. Volunteered that, the petitioner was removed as per the directions of Board of Directors.

25. RW2 Shri H.B. Kaushal, Ex. Secretary of the respondent was also examined in support of the case. However, he while under cross-examination categorically admitted that the petitioner had continuously worked from 1.11.2011 to 31.12.2012.

26. It was contended by the learned counsel for the respondent that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had continuously worked with the respondent for more than a year.

27. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. In para 1 of the statement of claim, the petitioner has categorically pleaded that he was employed on 1.11.2011 and his services had been retrenched on 1.1.2013 and during this period he had worked continuously. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

28. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. The respondent claimed that the petitioner did not work for 240 days. The petitioner was a workman hired on a daily waged basis. So, it is obvious that he would have difficulty in having access to all the official documents, muster rolls etc. in connection with his service.

In his chief-examination, the petitioner has claimed that he had rendered continuous service to the respondent from 1.11.2011 till 31.12.2012. This fact has not been challenged by the respondent at the time of cross-examination. It is the basic law that if a fact goes un-rebutted and unchallenged during the cross-examination, the same is to be taken as admitted by the other side. Even otherwise, RW2 Shri H.B. Kaushal was categorical in his cross-examination that the petitioner had continuously worked from 1.11.2011 to 31.12.2012. Meaning thereby that the petitioner had completed 240 days of work in a block of twelve calendar months preceding the date of his termination i.e. 1.1.2013 (as per the reference).

2. Section 25-F of the Act postulates as under:-

"25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) *notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."*

30. There is not even an iota of evidence on record to show that one month's notice in writing indicating the reasons for retrenchment of the petitioner/workman had been given and that he had been paid the compensation at the time of his retrenchment, as envisaged under Section 25-F of the Act. RW1 Shri Mohinder Singh clearly admitted in his substantive evidence that no notice of retrenchment had been given to the petitioner. RW2 Shri H.B. Kaushal specifically admitted in his cross-examination that no retrenchment compensation had been paid to the petitioner. For these reasons, the final termination of the services of the petitioner by the respondent w.e.f. 1.1.2013 is patently wrong and incorrect.

31. It was also claimed by the petitioner that juniors had been retained by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had retained any person junior to the petitioner at the time of his termination. That being so, the provisions of Section 25-G of the Act are not attracted in this case.

32. While testifying in the Court as PW1, the petitioner has given his age as 32 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the job. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled for the back wages.

33. Such being the situation, I have no hesitation to conclude that the termination of the services of the petitioner by the respondent is bad in the eyes of law.

34. These issues are decided accordingly.

Issue No. 3:

35. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned counsel appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

36. As a sequel to my findings on the issues above, the instant claim petition succeeds in part and the same is partly allowed. The final termination of the services of the petitioner by the respondent w.e.f. 1.1.2013 is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to seniority and continuity in service from the date of his illegal termination i.e. 1st January, 2013, except back wages. It is clarified that the services of the petitioner will be re-engaged by the respondent within a period of three months from today failing which the petitioner shall be entitled to the wages from the date of his termination to the date of his reinstatement. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref No.	: 349/2014
Date of Institution	: 16.12.2014
Date of Decision	: 11.9.2019

Shri Arun Kumar s/o Shri Prakash Chand, r/o Village Samleta, P.O. Rishikesh, Tehsil Jhandutha, District Bilaspur, H.P.*Petitioner.*

Versus

The Secretary, The Bilaspur District Co-operative Federation, Main Market Bilaspur, District Bilaspur, H.P.*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. S.S. Sippy, AR
For the Respondent(s)	: Sh. N.L. Thakur, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether termination of services of Shri Arun Kumar s/o Shri Prakash Chand, r/o Village Samleta, P.O. Rishikesh, Tehsil Jhandutha, District Bilaspur, H.P. by the Secretary, The Bilaspur District Co-operative Federation, Main Market Bilaspur, District Bilaspur, H.P. *w.e.f.* 01.0.12013 without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-worker is entitled to from the above employer?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he was engaged as a daily waged Assistant by the respondent *w.e.f.* 20.01.2011 and had worked as such continuously until 31.12.2012. His services had orally been terminated on 1.1.2013 without assigning any reason or notice. Before terminating the services of the petitioner, the respondent had not obtained the permission from the higher authorities, which amounts to unfair labour practice. His name was entered in the muster roll register. In the beginning his salary was Rs. 5,000/- and lastly he was getting Rs. 6000/- per month. The respondent had engaged simultaneously four workers, namely, S/Sh. Kamal Kumar, Shyam Lal, Ashok Kumar and me. Shri Ashok Kumar was not removed from service, but the services of the petitioner and Shri Kamal Kumar and Shri Arun Kumar had been terminated. No seniority list has been prepared by the respondent. Junior workers have been retained. The principle of 'last come first go' was not adhered to by the respondent. The provisions of Sections 25-B, 25-F (a) and 25-G of the Industrial Disputes Act, 1947 have been violated by the respondent. The petitioner is unemployed. He, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and jurisdiction. The contents of the petition were denied on merits. It was asserted that the petitioner had been appointed on temporary basis till there was transportation work with the federation. The respondent is a federation working under the Registrar, Co-operative Societies. A proper resolution has been passed to terminate the petitioner in the meeting of Board of Directors of the federation. The respondent had not violated any rules and regulations of the Industrial Disputes Act.

The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 8.10.2015:—

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 01.01.2013 is/was improper and unjustified as alleged? ..OPP.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable in the present form? ..OPR.
4. Whether this court has no jurisdiction to file the present case as alleged? ..OPR.

Relief.

6. Arguments of the learned Authorized Representative for the petitioner and the learned counsel for the respondent heard and records gone through.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1 : Decided accordingly

Issue No.2 : Decided accordingly

Issue No.3	: Negative
Issue No.4	: Negative
Relief	: Petition is partly allowed as per the operative part of the Award.

REASONS FOR FINDINGS

Issue No. 4:

8. This issue is taken up by me first for discussion as my findings on the same will impinge the outcome of the other issues.

9. While taking me through the provisions of Sections 72 and 73 of the H.P. Co-operative Societies Act, it was contended by the learned counsel for the respondent that since the respondent society is a co-operative society and its employees are governed by the provisions of the H.P. Co-operative Societies Act and the Rules framed there under, the provisions of the Industrial Disputes Act are not applicable. Only the Registrar of the Co-operative Societies is competent to decide the controversy.

10. Per contra, the learned authorized representative for the petitioner urged that the provisions of Sections 72 and 73 of the H.P. Co-operative Societies Act are not attracted in this case. According to him, the respondent society was engaged in a purely commercial venture and was an industry within the meaning of the Industrial Disputes Act. His client being a “workman” and the respondent being an “industry”, this Court has the jurisdiction to deal with the matter.

11. To my mind, the contention of the learned authorized representative for the petitioner holds the force and is sustainable. The dispute raised by the petitioner, who was an employee of the respondent society, does not touch the constitution, management or the business of the co-operative society. It is an admitted fact that the services of the petitioner stood terminated by the respondent, though it is claimed by the petitioner that the same were terminated on 1.1.2013, whereas the respondent claims that so was done on 31.12.2012.

12. Strictly speaking, a dispute between a co-operative society and its workman does not relate to the actual business of the co-operative society and, therefore, does not touch its business. A dispute as to the dismissal and claim of reinstatement is not a dispute falling within the jurisdiction of the Registrar of the Co-operative Societies functioning under the H.P. State Co-operative Societies Act. The power that can be exercised by an Industrial Tribunal or Labour Court under the Act cannot be exercised by the Registrar. Consequently, a dispute as regards the dismissal from service cannot be determined by the Registrar. The Registrar of the Co-operative Societies has no power to order the re-instatement of a workman, if he finds the retrenchment/dismissal of the workman to be unjust.

13. In fact, this question is no longer *res integra*. In Bangalore Water Supply and Sewerage Board vs. A Rajappa, 1978 LIC 467 (SC), it has been laid down that the co-operative societies are the industries.

14. Our own Hon'ble High Court in case titled as The Palampur Co-operative Marketing and Consumer Federation Ltd. vs. State of H.P. & others, Latest HLJ 2007 (HP) 713 and The Dehra Friends Co-operative Transport Society vs. The Presiding Officer, Labour Court, CWP No.781/2005 decided in May, 2007 has laid down that the Industrial Tribunal has the authority,

power and jurisdiction to entertain and decide the reference made to it with respect to the employees of the co-operative societies.

15. Reliance has been placed by the learned counsel for the respondent, on the decision of the Hon'ble Apex Court in case titled as R.C. Tiwari vs. M.P. State Co-operative Marketing Federation Ltd. & others (1997) 5 SCC 125. The ratio of this case was considered by our own Hon'ble High Court in The Palampur Co-operative Marketing and Consumer Federation Ltd. case (supra) and it was held that this judgment has no application to the facts and circumstances of the case since the employee straight away had approached the Labour Court and had not approached any authority under the Co-operative Societies Act. Similar is the case here. The petitioner in the present case, being an employee of the respondent, had approached this Tribunal and had not approached any other authority under the Co-operative Societies Act.

16. Reliance was also placed by the learned counsel for the respondent on another decision of the Hon'ble Apex Court in case titled as Himanshu Kumar Vidyarthi and Ors. Vs. The State of Bihar and Ors. decided on 26th March, 1997. In this case, the Hon'ble Supreme Court held that where persons have not been appointed to the post in accordance with the rules but were engaged on the basis of need of the work, they being temporary employees, their disengagement from service could not be construed to be a retrenchment under the Act. In the case on hand, as per the own admission made by RW1 Shri Mohinder Singh (respondent), the petitioner had been appointed and was being paid the salary by the respondent. Although, he volunteered to state that the petitioner had been engaged temporarily but, however, RW2 Shri H.B. Kaushal, the Ex-Secretary of the respondent was categorical in his substantive evidence that the petitioner had worked continuously from 20th January, 2011 to 31st December, 2012. So, in view of the aforesaid admissions, it cannot be said that the petitioner was a temporary employee, who had been engaged on the basis of need of the work. Hence, the aforesaid judgment also has no application to the facts and circumstances of this case.

17. Reliance was further placed on case titled as Hanuman Sahakari Pani Pravatha Sanstha Maryadit and Ors. vs. Ramchandra Bapuso Khade and Ors. 2016 NCJ 523 (NC), wherein it has been held by the Hon'ble National Consumer Disputes Redressal Commission that a dispute related to co-operative society can only be entertained under the Co-operative Societies Act and the Consumer Fora has no jurisdiction to decide the complaint. In the present case a reference has been received by this Tribunal from the appropriate Government, so in my considered view this judgment has also no application to the facts and circumstances of the case.

18. Lastly, reliance was also placed upon the case titled as U.P. Co-operative Spinning Mills vs. Ram Magan, decided on 24th May, 2007 by the Hon'ble Allahabad High Court. In this case, the Hon'ble Allahabad High Court has held that the Labour Court had committed an error in holding that the provisions of the U.P. Industrial Disputes Act was applicable upon an employee of a Co-operative Society, including the workman in question, so the impugned award was quashed. However, in view of the binding precedents laid down by our own Hon'ble High Court in the cases referred to above, wherein it has specifically been held that the Industrial Tribunal has the power and authority to decide the reference and the disputes like the one in question, this judgment, being persuasive in nature cannot be taken note of.

19. It is thus, concluded that this Court has the jurisdiction to hear and decide the case/reference.

20. This issue is decided in favour of the petitioner and against the respondent.

Issues No.1 and 2:

21. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

22. The short and simple case of the petitioner is that the respondent had terminated his services without complying with the provisions of Sections 25-F and 25-G of the Act.

23. In this behalf, the petitioner has examined himself as PW1. He has deposed that the respondent had employed him on 20.1.2011 and that he had continuously worked till 31.12.2012, when his services were orally terminated on 1.1.2013, without any reason or notice. Workers junior to him have been kept and the principle of 'last come first go' has not been followed.

24. The respondent on the other hand has examined the Secretary, Shri Mohinder Singh as RW1. He filed certain documents purportedly in support of the case of the respondent, which are exhibited as Ex. RW1/B to Ex. RW1/N. In his cross-examination, he has admitted that no notice of retrenchment had been given to the petitioner. Volunteered that, the petitioner was removed as per the directions of Board of Directors.

25. RW2 Shri H.B. Kaushal, Ex. Secretary of the respondent was also examined in support of the case. However, he while under cross-examination categorically admitted that the petitioner had continuously worked from 20.1.2011 to 31.12.2012.

26. It was contended by the learned counsel for the respondent that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had continuously worked with the respondent for more than a year.

27. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. In para 1 of the statement of claim, the petitioner has categorically pleaded that he was employed on 20.01.2011 and his services had been retrenched on 1.1.2013 and during this period he had worked continuously. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

28. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. The respondent claimed that the petitioner did not work for 240 days. The petitioner was a workman hired on a daily waged basis. So, it is obvious that he would have difficulty in having access to all the official documents, muster rolls etc. in connection with his service.

In his chief-examination, the petitioner has claimed that he had rendered continuous service to the respondent from 20.01.2011 till 31.12.2012. This fact has not been challenged by the respondent at the time of cross-examination. It is the basic law that if a fact goes un-rebutted and unchallenged during the cross-examination, the same is to be taken as admitted by the other side. Even otherwise, RW2 Shri H.B. Kaushal was categorical in his cross-examination that

the petitioner had continuously worked from 20.01.2011 to 31.12.2012. Meaning thereby that the petitioner had completed 240 days of work in a block of twelve calendar months preceding the date of his termination *i.e.* 1.1.2013 (as per the reference).

29. Section 25-F of the Act postulates as under:—

“25-F. Conditions precedent to retrenchment of workmen.- *No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—*

- (a) *the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:*
- (b) *the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and*
- (c) *notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”*

30. There is not even an iota of evidence on record to show that one month's notice in writing indicating the reasons for retrenchment of the petitioner/workman had been given and that he had been paid the compensation at the time of his retrenchment, as envisaged under Section 25-F of the Act. RW1 Shri Mohinder Singh clearly admitted in his substantive evidence that no notice of retrenchment had been given to the petitioner. RW2 Shri H.B. Kaushal specifically admitted in his cross-examination that no retrenchment compensation had been paid to the petitioner. For these reasons, the final termination of the services of the petitioner by the respondent *w.e.f.* 1.1.2013 is patently wrong and incorrect.

31. It was also claimed by the petitioner that juniors had been retained by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had retained any person junior to the petitioner at the time of his termination. That being so, the provisions of Section 25-G of the Act are not attracted in this case.

32. While testifying in the Court as PW1, the petitioner has given his age as 46 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the job. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled for the back wages.

33. Such being the situation, I have no hesitation to conclude that the termination of the services of the petitioner by the respondent is bad in the eyes of law.

34. These issues are decided accordingly.

Issue No. 3:

35. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned counsel

appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

36. As a sequel to my findings on the issues above, the instant claim petition succeeds in part and the same is partly allowed. The final termination of the services of the petitioner by the respondent *w.e.f.* 1.1.2013 is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to seniority and continuity in service from the date of his illegal termination *i.e.* 1st January, 2013, except back wages. It is clarified that the services of the petitioner will be re-engaged by the respondent within a period of three months from today failing which the petitioner shall be entitled to the wages from the date of his termination to the date of his reinstatement. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref No. : 348/2014

Date of Institution : 16.12.2014

Date of Decision : 11.9.2019

Shri Kamal Kumar s/o Shri Paras Ram, r/o Village Nali Panol, P.O. Rishikesh, Tehsil Sadar, District Bilaspur, H.P.*Petitioner.*

Versus

The Secretary, The Bilaspur District Co-operative Federation, Main Market Bilaspur, District Bilaspur, H.P.*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent(s) : Sh. N.L. Thakur, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether termination of services of Shri Kamal Kumar s/o Shri Paras Ram, r/o Village Nali Panol, P.O. Rishikesh, Tehsil Sadar, District Bilaspur, H.P. by the Secretary, The Bilaspur District Co-operative Federation, Main Market Bilaspur, District Bilaspur, H.P. *w.e.f.* 01.01.2013 without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority list, past service benefits and compensation the above Ex-worker is entitled to from the above employer?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he was engaged as a daily waged Assistant by the respondent *w.e.f.* 16.8.2010 and had worked as such continuously upto 31.12.2012. His services had orally been terminated on 1.1.2013 without assigning any reason or notice. Before terminating the services of the petitioner, the respondent had not obtained the permission from the higher authorities, which amounts to unfair labour practice. His name was entered in the muster roll register. In the beginning his salary was Rs. 4500/- and lastly he was getting Rs. 5000/- per month. The respondent had engaged simultaneously four workers, namely, S/Sh. Arun Kumar, Shyam Lal, Ashok Kumar and me. Shri Ashok Kumar was not removed from service, but the services of the petitioner and Shri Kamal Kumar and Shri Arun Kumar had been terminated. No seniority list has been prepared by the respondent. Junior workers have been retained. The principle of ‘last come first go’ was not adhered to by the respondent. The provisions of Sections 25-B, 25-F (a) and 25-G of the Industrial Disputes Act, 1947 have been violated by the respondent. The petitioner is unemployed. He, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and jurisdiction. The contents of the petition were denied on merits. It was asserted that the petitioner had been appointed on temporary basis till there was transportation work with the federation. The respondent is a federation working under the Registrar, Co-operative Societies. A proper resolution has been passed to terminate the petitioner in the meeting of Board of Directors of the federation. The respondent had not violated any rules and regulations of the Industrial Disputes Act.

The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 8.10.2015:—

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 01.01.2013 is/was improper and unjustified as alleged? ..*OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*

3. Whether the claim petition is not maintainable in the present form? ..OPR.

4. Whether this court has no jurisdiction to file the present case as alleged? ..OPR.

Relief

6. Arguments of the learned Authorized Representative for the petitioner and the learned counsel for the respondent heard and records gone through.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1 : Decided accordingly

Issue No.2 : Decided accordingly

Issue No.3 : Negative

Issue No.4 : Negative

Relief : Petition is partly allowed as per the operative part of the Award.

REASONS FOR FINDINGS

Issue No. 4:

8. This issue is taken up by me first for discussion as my findings on the same will impinge the outcome of the other issues.

9. While taking me through the provisions of Sections 72 and 73 of the H.P. Co-operative Societies Act, it was contended by the learned counsel for the respondent that since the respondent society is a co-operative society and its employees are governed by the provisions of the H.P. Co-operative Societies Act and the Rules framed there under, the provisions of the Industrial Disputes Act are not applicable. Only the Registrar of the Co-operative Societies is competent to decide the controversy.

10. Per contra, the learned authorized representative for the petitioner urged that the provisions of Sections 72 and 73 of the H.P. Co-operative Societies Act are not attracted in this case. According to him, the respondent society was engaged in a purely commercial venture and was an industry within the meaning of the Industrial Disputes Act. His client being a “workman” and the respondent being an “industry”, this Court has the jurisdiction to deal with the matter.

11. To my mind, the contention of the learned authorized representative for the petitioner holds the force and is sustainable. The dispute raised by the petitioner, who was an employee of the respondent society, does not touch the constitution, management or the business of the co-operative society. It is an admitted fact that the services of the petitioner stood terminated by the respondent, though it is claimed by the petitioner that the same were terminated on 1.1.2013, whereas the respondent claims that so was done on 31.12.2012.

12. Strictly speaking, a dispute between a co-operative society and its workman does not relate to the actual business of the co-operative society and, therefore, does not touch its business. A dispute as to the dismissal and claim of reinstatement is not a dispute falling within

the jurisdiction of the Registrar of the Co-operative Societies functioning under the H.P. State Co-operative Societies Act. The power that can be exercised by an Industrial Tribunal or Labour Court under the Act cannot be exercised by the Registrar. Consequently, a dispute as regards the dismissal from service cannot be determined by the Registrar. The Registrar of the Co-operative Societies has no power to order the re-instatement of a workman, if he finds the retrenchment/dismissal of the workman to be unjust.

13. In fact, this question is no longer *res integra*. In *Bangalore Water Supply and Sewerage Board vs. A Rajappa, 1978 LIC 467 (SC)*, it has been laid down that the co-operative societies are the industries.

14. Our own Hon'ble High Court in case titled as *The Palampur Co-operative Marketing and Consumer Federation Ltd. vs. State of H.P. & others, Latest HLJ 2007 (2) (HP) 713* and *The Dehra Friends Co-operative Transport Society vs. The Presiding Officer, Labour Court, CWP No.781/20015* decided in *May, 2007* has laid down that the Industrial Tribunal has the authority, power and jurisdiction to entertain and decide the reference made to it with respect to the employees of the co-operative societies.

15. Reliance has been placed by the learned counsel for the respondent, on the decision of the Hon'ble Apex Court in case titled as *R.C. Tiwari vs. M.P. State Co-operative Marketing Federation Ltd. & others (1997) 5 SCC 125*. The ratio of this case was considered by our own Hon'ble High Court in *The Palampur Co-operative Marketing and Consumer Federation Ltd. case (supra)* and it was held that this judgment has no application to the facts and circumstances of the case since the employee straight away had approached the Labour Court and had not approached any authority under the Co-operative Societies Act. Similar is the case here. The petitioner in the present case, being an employee of the respondent, had approached this Tribunal and had not approached any other authority under the Co-operative Societies Act.

16. Reliance was also placed by the learned counsel for the respondent on another decision of the Hon'ble Apex Court in case titled as *Himanshu Kumar Vidyarthi and Ors. Vs. The State of Bihar and Ors.* decided on 26th March, 1997. In this case, the Hon'ble Supreme Court held that where persons have not been appointed to the post in accordance with the rules but were engaged on the basis of need of the work, they being temporary employees, their disengagement from service could not be construed to be a retrenchment under the Act. In the case on hand, as per the own admission made by RW1 Shri Mohinder Singh (respondent), the petitioner had been appointed and was being paid the salary by the respondent. Although, he volunteered to state that the petitioner had been engaged temporarily but, however, RW2 Shri H.B. Kaushal, the Ex-Secretary of the respondent was categorical in his substantive evidence that the petitioner had worked continuously from 16th August, 2010 to 31st December, 2012. So, in view of the aforesaid admissions, it cannot be said that the petitioner was a temporary employee, who had been engaged on the basis of need of the work. Hence, the aforesaid judgment also has no application to the facts and circumstances of this case.

17. Reliance was further placed on case titled as *Hanuman Sahakari Pani Pravattha Sanstha Maryadit and Ors. vs. Ramchandra Bapuso Khade and Ors. 2016 NCJ 523 (NC)*, wherein it has been held by the Hon'ble National Consumer Disputes Redressal Commission that a dispute related to co-operative society can only be entertained under the Co-operative Societies Act and the Consumer Fora has no jurisdiction to decide the complaint. In the present case a reference has been received by this Tribunal from the appropriate Government, so in my considered view this judgment has also no application to the facts and circumstances of the case.

18. Lastly, reliance was also placed upon the case titled as *U.P. Co-operative Spinning Mills vs. Ram Magan*, decided on 24th May, 2007 by the Hon'ble Allahabad High Court. In this case, the Hon'ble Allahabad High Court has held that the Labour Court had committed

an error in holding that the provisions of the U.P. Industrial Disputes Act was applicable upon an employee of a Co-operative Society, including the workman in question, so the impugned award was quashed. However, in view of the binding precedents laid down by our own Hon'ble High Court in the cases referred to above, wherein it has specifically been held that the Industrial Tribunal has the power and authority to decide the reference and the disputes like the one in question, this judgment, being persuasive in nature cannot be taken note of.

19. It is thus, concluded that this Court has the jurisdiction to hear and decide the case/reference.

20. This issue is decided in favour of the petitioner and against the respondent.

Issues No.1 and 2:

21. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

22. The short and simple case of the petitioner is that the respondent had terminated his services without complying with the provisions of Sections 25-F and 25-G of the Act.

23. In this behalf, the petitioner has examined himself as PW1. He has deposed that the respondent had employed him on 16.8.2010 and that he had continuously worked till 31.12.2012, when his services were orally terminated on 1.1.2013, without any reason or notice. Workers junior to him have been kept and the principle of 'last come first go' has not been followed.

24. The respondent on the other hand has examined the Secretary, Shri Mohinder Singh as RW1. He filed certain documents purportedly in support of the case of the respondent, which are exhibited as Ex. RW1/B to Ex. RW1/N. In his cross-examination, he has admitted that no notice of retrenchment had been given to the petitioner. Volunteered that, the petitioner was removed as per the directions of Board of Directors.

25. RW2 Shri H.B. Kaushal, Ex. Secretary of the respondent was also examined in support of the case. However, he while under cross-examination categorically admitted that the petitioner had continuously worked from 16.8.2010 to 31.12.2012.

26. It was contended by the learned counsel for the respondent that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had continuously worked with the respondent for more than two years.

27. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. In para 1 of the statement of claim, the petitioner has categorically pleaded that he was employed on 16.8.2010 and his services had been retrenched on 1.1.2013 and during this period he had worked continuously. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

28. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. The respondent claimed that the petitioner did not work for 240 days. The petitioner was a workman hired on a daily waged basis. So, it is obvious that he would have difficulty in having access to all the official documents, muster rolls etc. in connection with his service.

In his chief-examination, the petitioner has claimed that he had rendered continuous service to the respondent from 16.8.2010 till 31.12.2012. This fact has not been challenged by the respondent at the time of cross-examination. It is the basic law that if a fact goes un-rebutted and unchallenged during the cross-examination, the same is to be taken as admitted by the other side. Even otherwise, RW2 Shri H.B. Kaushal was categorical in his cross-examination that the petitioner had continuously worked from 16.8.2010 to 31.12.2012. Meaning thereby that the petitioner had completed 240 days of work in a block of twelve calendar months preceding the date of his termination *i.e.* 1.1.2013 (as per the reference).

29. Section 25-F of the Act postulates as under:—

“25-F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

30. There is not even an iota of evidence on record to show that one month's notice in writing indicating the reasons for retrenchment of the petitioner/workman had been given and that he had been paid the compensation at the time of his retrenchment, as envisaged under Section 25-F of the Act. RW1 Shri Mohinder Singh clearly admitted in his substantive evidence that no notice of retrenchment had been given to the petitioner. RW2 Shri H.B. Kaushal specifically admitted in his cross-examination that no retrenchment compensation had been paid to the petitioner. For these reasons, the final termination of the services of the petitioner by the respondent *w.e.f.* 1.1.2013 is patently wrong and incorrect.

31. It was also claimed by the petitioner that juniors had been retained by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had retained any person junior to the petitioner at the time of his termination. That being so, the provisions of Section 25-G of the Act are not attracted in this case.

32. While testifying in the Court as PW1, the petitioner has given his age as 35 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the job. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled for the back wages.

33. Such being the situation, I have no hesitation to conclude that the termination of the services of the petitioner by the respondent is bad in the eyes of law.

34. These issues are decided accordingly.

Issue No. 3:

35. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned counsel appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

36. As a sequel to my findings on the issues above, the instant claim petition succeeds in part and the same is partly allowed. The final termination of the services of the petitioner by the respondent *w.e.f.* 1.1.2013 is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to seniority and continuity in service from the date of his illegal termination *i.e.* 1st January, 2013, except back wages. It is clarified that the services of the petitioner will be re-engaged by the respondent within a period of three months from today failing which the petitioner shall be entitled to the wages from the date of his termination to the date of his reinstatement. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

BEFORE THE NATIONAL LOK ADALAT HELD AT DHARAMSHALA

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19, of Legal Services Authorities Act, 1987 (Central Act)]

Applicant : Sh. Baljeet Singh s/o Shri Shambhu Ram, r/o Village Sakri, P.O. Sakri, Tehsil Baijnath, District Kangra, H.P.

Respondent : Employer/Manager, M/s Hotel Centre Point, Civil Lines, Dharamshala, District Kangra, H.P.

Number of proceedings of the Labour Court-cum-Industrial Tribunal, Dharamshala : 202/2017

Present:-

Name of Judicial Officer : Sh. Yogesh Jaswal

Name of Member : Sh. B.S. Pathania

AWARD

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

2. The parties who were present in person in the Court on 29.8.2019 stated that the *inter se* dispute between the parties given rise to the filing of the statement of claim under Section 10 of Industrial Disputes Act, 1947, has since been settled vide compromise deed filed in the Court which was taken on record as Ex.C-1. Statements of the parties were recorded separately, which also go to support the compromise Ex.C-1.

3. Pursuant to the compromise deed Ex.C-1, the learned authorized representative for the petitioner and the learned counsel for the respondent who are present before the Bench of National Lok Adalat today state that Rs. 1,25,000/- (Rupees one lakh twenty five thousand only), has been paid by the respondent and received by the petitioner vide cheque no. 515559 dated 14.9.2019 drawn on ICICI Bank Branch Dharamshala. Statement of the learned authorized representative for the petitioner and that of the learned counsel for the respondent recorded separately also go to support this fact.

4. Accordingly, in view of the compromise between the parties as reflected *vide* compromise deed Ex.C-1, the reference is disposed of as compromised, on payment of Rs. 1,25,000/- to the petitioner by the respondent.

5. The reference is answered in the aforesaid terms. A copy of this Order/Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Petitioner : Sh. N.L. Kaundal, AR

Respondent : Sh. Rohit Dutta, Adv.

Judicial Officer Member

Date : 14.9.2019

BEFORE THE NATIONAL LOK ADALAT HELD AT DHARAMSHALA

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19, of Legal Services Authorities Act, 1987 (Central Act)]

Applicant: Smt. Bhari Devi w/o Shri Bazir Chand, r/o Village Har Chakol, P.O. Nohra, Tehsil Baijnath, District Kangra, H.P.

Respondent : Employer/Manager, M/S Baijnath Tea Estate Company Private Limited, Village, P.O. & Tehsil Baijnath, District Kangra, H.P.

Number of proceedings of the Labour Court-cum-Industrial Tribunal, Dharamshala : 648/2016

Present:

Name of Judicial Officer : Sh. Yogesh Jaswal

Name of Member : Sh. B.S. Pathania

AWARD

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

2. The petitioner who was present in person and the learned counsel for the respondent in the Court on 3.9.2019 stated that the *inter se* dispute between the parties given rise to the filing of the statement of claim under Section 10 of Industrial Disputes Act, 1947, has since been settled vide compromise deed filed in the Court which was taken on record as Ex.C-1. Statement of the petitioner and that of the learned counsel for the respondent were recorded separately, which also go to support the compromise Ex.C-1.

3. Pursuant to the compromise deed Ex.C-1, the parties who are present in person before the Bench of National Lok Adalat today state that Rs. 1,50,000/- (Rupees one lakh fifty thousand only), has been paid by the respondent and received by the petitioner vide cheque no. 000220 dated 14.9.2019 drawn on Kotak Mahindra Bank. Statements of the parties recorded separately also go to support this fact.

4. Accordingly, in view of the compromise between the parties as reflected *vide* compromise deed Ex.C-1, the reference is disposed of as compromised, on payment of Rs. 1,50,000/- to the petitioner by the respondent, being the full and final settlement in the case.

5. The reference is answered in the aforesaid terms. A copy of this Order/Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Petitioner	: Smt. Bhari Devi in person with Sh. N.L. Kaundal, AR
Respondent	: Sh. Ashwani Kumar Kaushal, Manager with Sh. Rajinder Chaudhary, Adv.
Judicial Officer	Member

Date: 14.9.2019

BEFORE THE NATIONAL LOK ADALAT HELD AT DHARAMSHALA

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19, of Legal Services Authorities Act, 1987 (Central Act)]

Applicant : Smt. Sandhi Devi w/o Shri Nand Lal, r/o Village Dhanag, P.O. Dhanag Tehsil Baijnath, District Kangra, H.P.

Respondent: Employer/Manager, M/S Baijnath Tea Estate Company Private Limited, Village, P.O. & Tehsil Baijnath, District Kangra, H.P. Number of proceedings of the Labour Court-cum-Industrial Tribunal, Dharamshala: 650/2016

Present:

Name of Judicial Officer : Sh. Yogesh Jaswal

Name of Member : Sh. B.S. Pathania

AWARD

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

2. The petitioner who was present in person and the learned counsel for the respondent in the Court on 3.9.2019 stated that the *inter se* dispute between the parties given rise to the filing of the statement of claim under Section 10 of Industrial Disputes Act, 1947, has since been settled vide compromise deed filed in the Court which was taken on record as Ex.C-1. Statement of the petitioner and that of the learned counsel for the respondent were recorded separately, which also go to support the compromise Ex.C-1.

3. Pursuant to the compromise deed Ex.C-1, the parties who are present in person before the Bench of National Lok Adalat today state that Rs. 1,50,000/- (Rupees one lakh fifty thousand only), has been paid by the respondent and received by the petitioner vide cheque no. 000221 dated 14.9.2019 drawn on Kotak Mahindra Bank. Statements of the parties recorded separately also go to support this fact.

4. Accordingly, in view of the compromise between the parties as reflected *vide* compromise deed Ex.C-1, the reference is disposed of as compromised, on payment of Rs. 1,50,000/- to the petitioner by the respondent, being the full and final settlement in the case.

5. The reference is answered in the aforesaid terms. A copy of this Order/Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Petitioner	: Smt. Sandhi Devi in person with Sh. N.L. Kaundal, AR
Respondent	: Sh. Ashwani Kumar Kaushal, Manager with Sh. Rajinder Chaudhary, Adv.

Judicial Officer

Member

Date: 14.9.2019

BEFORE THE NATIONAL LOK ADALAT HELD AT DHARAMSHALA

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19, of Legal Services Authorities Act, 1987 (Central Act)]

Applicant: Smt. Pawn Devi w/o Shri Balak Ram, r/o Village Har Chakol, P.O. Mahalpatt, Tehsil Baijnath, District Kangra, H.P.

Respondent : Employer/Manager, M/S Baijnath Tea Estate Company Private Limited, Village, P.O. & Tehsil Bainnath, District Kangra, H.P. Number of proceedings of the Labour Court-cum-Industrial Tribunal, Dharamshala 647/2016

Present:-

Name of Judicial Officer : Sh. Yogesh Jaswal

AWARD

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

2. The petitioner who was present in person and the learned counsel for the respondent in the Court on 3.9.2019 stated that the *inter se* dispute between the parties given rise to the filing of the statement of claim under Section 10 of Industrial Disputes Act, 1947, has since been settled vide compromise deed filed in the Court which was taken on record as Ex.C-1. Statement of the petitioner and that of the learned counsel for the respondent were recorded separately, which also go to support the compromise Ex.C-1.

3. Pursuant to the compromise deed Ex.C-1, the parties who are present in person before the Bench of National Lok Adalat today state that Rs. 2,00,000/- (Rupees two lakhs only), has been paid by the respondent and received by the petitioner vide cheque no. 000219 dated 14.9.2019 drawn on Kotak Mahindra Bank. Statements of the parties recorded separately also go to support this fact.

4. Accordingly, in view of the compromise between the parties as reflected *vide* compromise deed Ex.C-1, the reference is disposed of as compromised, on payment of Rs. 2,00,000/- to the petitioner by the respondent, being the full and final settlement in the case.

5. The reference is answered in the aforesaid terms. A copy of this Order/Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Petitioner : Smt. Pawn Devi in person with Sh. N.L. Kaundal, AR

Respondent : Sh. Ashwani Kumar Kaushal, Manager with Sh. Rajinder Chaudhary, Adv.

Judicial Officer

Member

Date: 14.9.2019

BEFORE THE NATIONAL LOK ADALAT HELD AT DHARAMSHALA

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19, of Legal Services Authorities Act, 1987 (Central Act)]

Applicant : Smt. Feek Devi w/o Shri Fingru Ram, r/o Village Har Chakol, P.O. Mahalpatt Tehsil Baijnath, District Kangra, H.P.

Respondent : Employer/Manager, M/S Baijnath Tea Estate Company Private Limited, Village, P.O. & Tehsil Bainnath, District Kangra, H.P.

Number of proceedings of the Labour Court-cum-Industrial Tribunal, Dharamshala : 649/2016

Present:

Name of Judicial Officer : Sh. Yogesh Jaswal

Name of Member : Sh. B.S. Pathania

AWARD

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

2. The petitioner who was present in person and the learned counsel for the respondent in the Court on 3.9.2019 stated that the *inter se* dispute between the parties given rise to the filing of the statement of claim under Section 10 of Industrial Disputes Act, 1947, has since been settled vide compromise deed filed in the Court which was taken on record as Ex.C-1. Statement of the petitioner and that of the learned counsel for the respondent were recorded separately, which also go to support the compromise Ex.C-1.

3. Pursuant to the compromise deed Ex.C-1, the parties who are present in person before the Bench of National Lok Adalat today state that Rs. 2,00,000/- (Rupees two lakhs only), has been paid by the respondent and received by the petitioner vide cheque no. 000218 dated 14.9.2019 drawn on Kotak Mahindra Bank. Statements of the parties recorded separately also go to support this fact.

4. Accordingly, in view of the compromise between the parties as reflected *vide* compromise deed Ex.C-1, the reference is disposed of as compromised, on payment of Rs.2,00,000/- to the petitioner by the respondent, being the full and final settlement in the case.

5. The reference is answered in the aforesaid terms. A copy of this Order/Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Petitioner : Smt. Feek Devi in person with Sh. N.L. Kaundal, AR

Respondent : Sh. Ashwani Kumar Kaushal, Manager with Sh. Rajinder Chaudhary, Adv.

Judicial Officer

Member

Date: 14.9.2019

BEFORE THE NATIONAL LOK ADALAT HELD AT DHARAMSHALA

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19, of Legal Services Authorities Act, 1987 (Central Act)]

Applicant : The President/General Secretary, Baijnath Tea Estate Mazdoor Sangh, No.915, Baijnath, District Kangra, H.P.

Respondent : The Employer/Manager, Baijnath Tea Estate Company Pvt. Ltd., Baijnath, District Kangra, H.P.

Number of proceedings of the Labour Court-cum-Industrial Tribunal, Dharamshala : 229/2014

Present:

Name of Judicial Officer : Sh. Yogesh Jaswal

Name of Member : Sh. B.S. Pathania

AWARD

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

In view of the separate statement of Shri N.L. Kaundal, authorized representative for the petitioner recorded on 03.9.2019 and which is placed on record, the present reference under Section 10 of the Industrial Disputes Act, 1947 is hereby dismissed as withdrawn. File after due completion be consigned to the record room.

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Petitioner : Sh. N.L. Kaundal, AR

Respondent : Sh. Ashwani Kumar Kaushal, Manager with Sh. Rajinder Chaudhary, Adv.

Judicial Officer

Member

Date: 14.9.2019

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 15/2018

Date of Institution : 28.3.2018

Date of Decision : 16.09.2019

Shri Lekh Raj s/o Shri Prem Chand, r/o Village Dev Bharari, P.O. Sulyali, Tehsil Nurpur, District Kangra, H.P.Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P.Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.

For the Respondent : Sh. B.C. Katoch, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Lekh Raj s/o Shri Prem Chand, r/o Village Dev Bharari, P.O. Sulyali, Tehsil Nurpur, District Kangra, H.P. during August, 1988 by the Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after nearly 23 years *vide* demand notice dated 23.07.2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of nearly 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was initially engaged as a beldar on daily waged basis in May, 1986 in HPPWD Division Jassur (Nurpur), H.P. (now HPPWD Jawali) on various construction sites, like Bodh to Chaki Dhar Road, Suliali to Dev Bhrari etc. However, his services were disengaged *w.e.f.* June, 1990 in violation of the law. The petitioner had completed 240 days in each calendar year. The respondent under a mistaken notion and ignorance of law had terminated the services of the petitioner in June, 1990. He thereafter had made oral requests to the respondent and his subordinates to re-engage him. Although, he was assured to be re-engaged after three or four months, but nothing was heard thereafter from the department. A letter in writing had also been sent by him to the department for his re-engagement on daily waged basis, but without success. Smt. Kusum Lata, junior to him was retained by the department and she at present is working in HPPWD Division Nurpur. Twenty four other juniors were also re-appointed by the department in the year 2010, as per the directions of the Hon’ble High Court. The principle of ‘last come first go’ was not adhered to by the respondent. No one month’s notice, nor any retrenchment compensation had been paid to the petitioner. The provisions of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been violated by the respondent. New/fresh hands had also been engaged and no opportunity was ever given to the petitioner for his re-engagement, thereby, violated the provisions of Section 25-H of the Act. The petitioner is not gainfully employed since the time of his illegal and unjustified termination by the respondent. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. However, it was admitted by the respondent that the petitioner had been engaged as a daily wager in the year 1986. However, it was specifically denied that he had been disengaged in June, 1990. It was asserted that the petitioner worked intermittently *w.e.f.* May, 1986 to August, 1988 and thereafter had left the job of his own sweet will. It is denied that the petitioner had completed 240 days in each calendar year. It is claimed that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* HP Government Notification no. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is admitted that HPPWD Division Jawali is involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Neither any junior had been retained nor engaged by the respondent, so there was no violation of any of the provisions of the Act. It is denied that a pick and choose policy had been adopted by the respondent. The persons mentioned at serial no.1 to 24 were engaged as per the directions of the Court. After leaving the work the petitioner had never approached the respondent and had raised the demand notice only in the year 2011. Only those workers had been regularized who had worked continuously and fulfilled

the requisite criteria of regularization as per the Government policy. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 02.11.2018:

1. Whether termination of the service of petitioner by the respondent during August, 1988 is/was legal and justified as alleged? ..OPP.
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Lekh Raj examined himself as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. Shri Jagtar Singh Thakur (respondent) appeared as RW1 and tendered his statement by way of affidavit Ex. RW1/A. He also placed on the file copy of mandays chart of the petitioner as Ex.RW1/B, copy of notification dated 21.7.1994 as Ex.RW1/C and copy of letter dated 18.8.1994 as Ex.RW1/D.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	: Yes
Issue No.2	: Negative
Issue No.3	: Yes
Issue No.4	: No
Relief	: Claim petition dismissed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Lekh Raj examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He also admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification no.PBW-(A)-A(1)17/94. He denied that he had never worked in Jawali Division. He also denied that he had worked intermittently *w.e.f.* May, 1986 until August, 1988 in the department. He further denied that he had left the work of his own. Volunteered that, from May, 1986 until June, 1990 he had worked continuously. He specifically denied that he had never worked in the department continuously, nor he had ever been given breaks by the department. He feigned ignorance that the workers mentioned in the petition and the affidavit were kept at work in HPPWD Division Nurpur as per the orders of the Court. He specifically denied that the respondent had adhered to the principle of 'last come first go'. He also denied that he had never worked for 240 days and above in any year. He further denied that only those workers had been regularized who had fulfilled the conditions of the policy of the Government for regularization. He admitted that he owns land, which he cultivates. He also admitted that he is doing the days' drudgery privately. Self stated that, as and when the work is available. He denied that he is making a phoney statement.

12. Conversely, Shri Jagtar Singh Thakur, Executive Engineer, HPPWD, Division Jawali (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

13. In the cross-examination, he denied that the petitioner had worked from May, 1986 till June, 1990 regularly and had completed 240 days. Volunteered that, as per their record, the petitioner had only worked for 216 days. He denied that the petitioner had been removed without any notice and that junior beldars/workers were retained. He admitted that no notice had been given to the petitioner to report for work. Self stated that he had left the job of his own. He further admitted that Ex.RW1/D contains the names of only those persons, who have been working in the department since the year 1994. Further, he denied that the petitioner had been given the assurance by the department that as and when the work would be available, he would be called. Further, he denied that intentionally incomplete muster rolls and other record pertaining to the petitioner had been filed.

14. Ex.RW1/B is the copy of the mandays chart relating to the petitioner.

15. Ex. RW1/C is the copy of notification dated 21st July, 1994 with regard to the shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

16. Ex. RW1/D is the copy of Office Order dated 18.8.1994 regarding the transfer of work-charged staff to HPPWD Division Nurpur, on the closure of HPPWD Jassur and its opening at Jawali.

17. It is an admitted fact of the parties that the services of the petitioner were engaged as a daily waged beldar. Although, the petitioner claimed that he had worked as a beldar from May, 1986 until June, 1990 but, however, the respondent has produced on record the mandays chart of the petitioner, copy of which is Ex.RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of May, 1986 for the first time as a daily waged beldar and he had worked as such until August, 1988. The claimant/petitioner has not placed and exhibited on record any document to show that he had regularly worked with the respondent from May, 1986 until June, 1990.

18. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that his services had orally been terminated by the respondent, whereas the stand taken by the respondent is that after August, 1988 the petitioner had left the work of his own.

19. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Jagtar Singh Thakur, (RW1) alleging that the workman has abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

20. As per the reference received from the appropriate Government, the services of the petitioner stood finally terminated during August, 1988. Section 10 (4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding the alleged final termination of the services of the petitioner by the respondent in June, 1990. However, looking to the statement of claim and the sworn testimony of the petitioner, it is apparent that he has claimed that his services had been finally terminated by the respondent in the month of June, 1990. Such pleadings and evidence of the petitioner cannot be looked into by this Court, being beyond the terms of the reference. Since, it has not been pleaded nor stated by the petitioner that his services stood terminated by the respondent in August, 1988, therefore, the question of final termination of his services by the respondent (as per the reference) does not arise. Rather, the same has become insignificant.

21. Even otherwise, Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

22. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. Although, in his chief-examination the petitioner claimed that he had worked with the respondent as a beldar continuously from May, 1986 until June, 1990, but no mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. It has been laid down by the Hon'ble Supreme Court in case titled as Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138 that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

23. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondent. A detail of such persons has

been given in para 8 of the statement of claim. The respondent had refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the department. Significantly, no seniority list has been placed and exhibited on record or any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondent at the time of the termination of his services. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondent during the pendency of this case. Therefore, it cannot be said that the respondent had violated the principle of 'last come first go', as envisaged in Section 25-G of the Act.

24. It was also claimed by the petitioner that new appointments had been made by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

25. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

ISSUE NO. 3:

26. Taking into account my findings on issues no. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue and that the instant claim petition is not maintainable in the present form.

27. This issue is decided against the petitioner and in favour of the respondent.

Issue No. 4:

28. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:—

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

29. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

30. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 16th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	:	13/2018
Date of Institution	:	28.3.2018
Date of Decision	:	16.09.2019

Shri Shyam Lal s/o Shri Punnu Ram, r/o Village Dev Bharari, P.O. Suliyali, Tehsil Nurpur, District Kangra, H.P.*Petitioner.*

Versu

The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P.*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	:	Sh. Pankaj Bhardwaj, Adv.
For the Respondent(s)	:	Sh. B.C. Katoch, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Shyam Lal s/o Shri Punnu Ram, r/o Village Dev Bharari, P.O. Suliyali, Tehsil Nurpur, District Kangra, H.P. during October, 1987 by the Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after nearly 24 years *vide* demand notice dated 23.07.2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of nearly 24 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was initially engaged as a beldar on daily waged basis in May, 1986 in HPPWD Division Jassur (Nurpur), H.P. (now HPPWD Jawali) on various construction sites, like Bodh to Chaki Dhar Road, Suliali to Dev Bhrari etc. However, his services were disengaged *w.e.f.* June, 1990 in violation of the law. The petitioner had completed 240 days in each calendar year. The respondent under a mistaken notion and ignorance of law had terminated the services of the petitioner in June, 1990. He thereafter had made oral requests to the respondent and his subordinates to re-engage him. Although, he was assured to be re-engaged after three or four months, but nothing was heard thereafter from the department. A letter in writing had also been sent by him to the

department for his re-engagement on daily waged basis, but without success. Smt. Kusum Lata, junior to him was retained by the department and she at present is working in HPPWD Division Nurpur. Twenty four other juniors were also re-appointed by the department in the year 2010, as per the directions of the Hon'ble High Court. The principle of 'last come first go' was not adhered to by the respondent. No one month's notice, nor any retrenchment compensation had been paid to the petitioner. The provisions of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been violated by the respondent. New/fresh hands had also been engaged and no opportunity was ever given to the petitioner for his re-engagement, thereby, violated the provisions of Section 25-H of the Act. The petitioner is not gainfully employed since the time of his illegal and unjustified termination by the respondent. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. However, it was admitted by the respondent that the petitioner had been engaged as a daily wager in the year 1986. However, it was specifically denied that he had been disengaged in June, 1990. It was asserted that the petitioner worked intermittently *w.e.f.* May, 1986 to October, 1987 and thereafter had left the job of his own sweet will. It is denied that the petitioner had completed 240 days in each calendar year. It is claimed that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification no. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is admitted that HPPWD Division Jawali is involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Neither any junior had been retained nor engaged by the respondent, so there was no violation of any of the provisions of the Act. It is denied that a pick and choose policy had been adopted by the respondent. The persons mentioned at serial no.1 to 24 were engaged as per the directions of the Court. After leaving the work the petitioner had never approached the respondent and had raised the demand notice only in the year 2011. Only those workers had been regularized who had worked continuously and fulfilled the requisite criteria of regularization as per the Government policy. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 02.11.2018:

1. Whether termination of the service of petitioner by the respondent during October, 1987 is/was legal and justified as alleged? ..OPP.
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Shyam Lal examined himself as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. Shri Jagtar Singh Thakur (respondent)

appeared as RW1 and tendered his statement by way of affidavit Ex. RW1/A. He also placed on the file copy of mandays chart of the petitioner as Ex.RW1/B, copy of notification dated 21.7.1994 as Ex.RW1/C and copy of letter dated 18.8.1994 as Ex.RW1/D.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Yes
Issue No.2	: Negative
Issue No.3	: Yes
Issue No.4	: No
Relief	: Claim petition dismissed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Shyam Lal examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He also admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification no.PBW-(A)A(1)17/94. He denied that he had never worked in Jawali Division. He also denied that he had worked intermittently w.e.f. January, 1986 upto October, 1987 in the department. He further denied that he had left the work of his own. Volunteered that, from May, 1986 upto June, 1990 he had worked continuously. He specifically denied that he had never worked in the department continuously, nor he had ever been given breaks by the department. He feigned ignorance that the workers mentioned in the petition and the affidavit were kept at work in HPPWD Division Nurpur as per the orders of the Court. He specifically denied that the respondent had adhered to the principle of 'last come first go'. He also denied that he had never worked for 240 days and above in any year. He further denied that only those workers had been regularized who had fulfilled the conditions of the policy of the Government for regularization. He admitted that he owns land, which he cultivates. He also admitted that he is doing the days' drudgery privately. Self stated that, as and when the work is available. He denied that he is making a phoney statement.

12. Conversely, Shri Jagtar Singh Thakur, Executive Engineer, HPPWD, Division Jawali (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

13. In the cross-examination, he denied that the petitioner had worked from May, 1986 till June, 1990 regularly and had completed 240 days. Volunteered that, as per their record, the petitioner had only worked for 183 days. He denied that the petitioner had been removed without any notice and that junior beldars/workers were retained. He admitted that no notice had been given to the petitioner to report for work. Self stated that he had left the job of his own. He further admitted that Ex.RW1/D contains the names of only those persons, who have been working in the department since the year 1994. Further, he denied that the petitioner had been given the assurance by the department that as and when the work would be available, he would be called. Further, he denied that intentionally incomplete muster rolls and other record pertaining to the petitioner had been filed.

14. Ex.RW1/B is the copy of the mandays chart relating to the petitioner.

15. Ex. RW1/C is the copy of notification dated 21st July, 1994 with regard to the shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

16. Ex. RW1/D is the copy of Office Order dated 18.8.1994 regarding the transfer of work-charged staff to HPPWD Division Nurpur, on the closure of HPPWD Jassur and its opening at Jawali.

17. It is an admitted fact of the parties that the services of the petitioner were engaged as a daily waged beldar. Although, the petitioner claimed that he had worked as a beldar from May, 1986 until June, 1990 but, however, the respondent has produced on record the mandays chart of the petitioner, copy of which is Ex.RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of January, 1986 for the first time as a daily waged beldar and he had worked as such until October, 1987. The claimant/petitioner has not placed and exhibited on record any document to show that he had regularly worked with the respondent from May, 1986 until June, 1990.

18. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that his services had orally been terminated by the respondent, whereas the stand taken by the respondent is that after October, 1987 the petitioner had left the work of his own.

19. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Jagtar Singh Thakur, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

20. As per the reference received from the appropriate Government, the services of the petitioner stood finally terminated during October, 1987. Section 10 (4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute

referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding the alleged final termination of the services of the petitioner by the respondent in June, 1990. However, looking to the statement of claim and the sworn testimony of the petitioner, it is apparent that he has claimed that his services had been finally terminated by the respondent in the month of June, 1990. Such pleadings and evidence of the petitioner cannot be looked into by this Court, being beyond the terms of the reference. Since, it has not been pleaded nor stated by the petitioner that his services stood terminated by the respondent in October, 1987, therefore, the question of final termination of his services by the respondent (as per the reference) does not arise. Rather, the same has become insignificant.

21. Even otherwise, Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

22. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. Although, in his chief-examination the petitioner claimed that he had worked with the respondent as a beldar continuously from January, 1986 until June, 1990, but no mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. It has been laid down by the Hon'ble Supreme Court in case titled as Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138 that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

23. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondent. A detail of such persons has been given in para 8 of the statement of claim. The respondent had refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the department. Significantly, no seniority list has been placed and exhibited on record or any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondent at the time of the termination of his services. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondent during the pendency of this case. Therefore, it cannot be said that the respondent had violated the principle of 'last come first go', as envisaged in Section 25-G of the Act.

24. It was also claimed by the petitioner that new appointments had been made by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

25. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

26. Taking into account my findings on issues no. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue and that the instant claim petition is not maintainable in the present form.

27. This issue is decided against the petitioner and in favour of the respondent.

Issue No. 4:

28. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

29. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

30. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 16th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 389/2015

Date of Institution : 25.8.2015

Date of Decision : 17.9.2019

Smt. Reeta Sharma w/o Shri Ratan Lal Sharma, r/o Village and Post Office Soldha, Tehsil Sadar, District Bilaspur, H.P.Petitioner.

Versus

1. The Principal, Government Senior Secondary School, Soldha, District Bilaspur, H.P.
2. The Chairman, School Development & Management Committee, Government Senior Secondary School, Soldha, District Bilaspur, H.P. ..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent(s) : Smt. Navina Rahi, DDA

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Smt. Reeta Sharma w/o Shri Rattan Lal Sharma, r/o V.P.O. Soldha, Tehsil Sadar, District Bilaspur, H.P. *w.e.f.* 08-10-2013 by (i) the Principal, Government Senior Secondary School Soldha, District Bilaspur, H.P., (ii) the Chairman, School Development & Management Committee, Government Senior Secondary School Soldha, District Bilaspur, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that she was initially engaged on daily waged basis as a mid day meal worker on 7.7.2008. She had worked as such continuously until 2.12.2009. Thereafter, without any reason and notice, her services were orally terminated on 3.12.2009. She issued demand notice. The appropriate Government after the receipt of the failure report from the Conciliation Officer, made a reference to this Court, which was allowed on 20.5.2013. She had again joined the services with the respondent on 1.6.2013. However, her services were again illegally terminated by the respondents on 8.10.2013. Her seniority has been disturbed and a junior to her named Smt. Rita Devi has been engaged. The principle of ‘last come first go’ was not adhered to by the respondent. No prior permission had been obtained from the higher authorities by the respondents before terminating her services. The respondents have violated the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). She is unemployed. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objection regarding lack of maintainability. The contents of the petition were denied on merits. However, it was admitted that the petitioner had been engaged as a mid day meal worker, but by the School Management Committee vide resolution no. 3 dated 7.7.2008. She had again been engaged on 3.6.2013, as per the Award dated 25.5.2013 passed by the Court. She had worked as a mid day meal worker from 3.6.2013 until 4.10.2013. Thereafter, she did not attend the school. On 9.10.2013, the petitioner had been ordered to attend her duties vide a letter. She neither reported back on duty, nor had given any information. She was again informed about her absence from duty vide a letter. Through a special messenger, letter dated 14.10.2013 had also been sent to her house regarding her absence from duty. It was informed by her husband that she

had been arrested by the police and had not come back home since 5.10.2013. On inquiry, it transpired that the petitioner had been arrested in case FIR no.170/2013 dated 4.10.2013 by the police of Police Station Barmana. Thereafter, the School Management Committee had terminated the services of the petitioner vide resolution no.2 dated 19.10.2013, as per Rule 19 of the guidelines for hiring of services of Cook-cum-Helper under Mid Day Meal Scheme framed by the department of Elementary Education, Government of Himachal Pradesh, which provides that continuous absence beyond three days from the school without approval of member secretary/competent authority shall automatically lead to the termination of the services of the Cook-cum-Helper and that he/she would not be entitled to any wages/remuneration for the period of absence. There are three posts of Mid Day Meal Worker in the school. When Shri Chuni Lal had resigned in the month of May, 2014, to fill up the requirement of third Mid Day Meal Worker, Smt. Reeta Devi had been engaged on 17.6.2013 after observing all codal formalities. It is denied that the respondents had indulged in unfair labour practice and that the seniority of the petitioner had been ignored. The services of the petitioner had been terminated on account of her own act and conduct. There is no need to obtain any sanction for terminating the Mid Day Meal Worker from the higher authorities. There has been no violation of any of the provisions of the Act by the respondents. The petitioner is gainfully employed, as she is running a shop. The respondents, thus, pray for the dismissal of the reference.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 14.12.2016

1. Whether the termination of the services of the petitioner by the respondents *w.e.f.* 08-10-2013 is/was improper and unjustified as alleged? ..OPP.
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable in the present form? ..OPR.

Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Smt. Reeta Sharma appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A, copy of judgment dated 4.8.2016 as Ex.PW1/B and copy of Award dated 20.5.2013 passed in Reference no.1/2011 as Ex.PW1/C The respondent examined one Shri Om Prakash Parmar as RW1, who tendered his statement by way of affidavit Ex. RW1/A and copy of guidelines as Mark-RA.

7... Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1 : No

Issue No.2 : Negative

Issue No.3 : Yes

Relief : Petition is dismissed as per the operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner Smt. Reeta Sharma stepped into the witness box as PW1. In her affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, she admitted that she was engaged as a Mid Day Meal Worker in the school. She further admitted that Mid Day Meal Worker is engaged as per the resolution passed by the School Management Committee. Further, she admitted that she had been engaged in accordance with resolution no. 3 dated 7.7.2008. She denied that thereafter she had left the work. She admitted that in the year 2011 she had raised a dispute before this Court. She further admitted that the said case was decided in her favour in the year 2013 and thereafter she was kept at work. She admitted that FIR no. 170/2013 dated 4.10.2013 was lodged against her. Volunteered that, she has been acquitted. She feigned ignorance that when the department came to know of the police case registered against her and that she had remained in police custody, as per the guidelines of the Mid Day Scheme, on 19.10.2013 she was disengaged by the department. She had remained in custody for 26-27 days. She admitted that there were three posts of Mid Day Meal Workers. She works as an agriculturist and under MANREGA. She denied that she has given a phoney statement.

12. Ex. PW1/B is the copy of judgment dated passed in Sessions Trial No.19/7 of 2013 dated 4.8.2016 by the Special Judge, Bilaspur.

13. Ex.PW1/C is the copy of Award dated 20.5.2013 passed by this Court relating to the petitioner.

14. Mark-PA is the leave application of the petitioner. It unfolds that the petitioner had prayed for two days leave for 7th and 8th October, 2013 from respondent no.1.

15. Conversely, Shri Om Prakash Parmar (respondent no.1) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondents.

16. In the cross-examination, he admitted that the petitioner had been re-engaged as per the orders of the Court. He feigned ignorance that after termination of the services of the petitioner Smt. Reeta Devi was kept at work. Volunteered that, these days Smt. Krishni Devi has been kept at work. After being acquitted by the Court, the petitioner has not been again kept at work. He admitted that notice had been given to the petitioner. He denied that the department had illegally removed the petitioner.

17. Mark-RA is the copy of guidelines for hiring of services of Cook-cum-Helper under MID DAY MEAL Scheme by the School Management Committee in Himachal Pradesh.

18. Mark-A is the copy of letter dated 9.10.2013 issued to the petitioner by the Member Secretary/Pradhan of School Management Committee, Government Senior Secondary

School, Soldha. It unfolds that the School Management Committee had directed the petitioner to resume her duties forthwith in the school, as she was absenting herself since 5.10.2013.

19. Mark-B is the copy of letter/notice dated 11.10.2013 issued to the petitioner by the Member Secretary/Pradhan of the School Management Committee, Government Senior Secondary School, Soldha, as per which the petitioner had again been asked by the School Management Committee to report back on duty, lest proceedings of indiscipline would be initiated against her.

20. Mark-C and Mark-D are the copies of letters/notices dated 14.10.2013 issued to the petitioner by the Member Secretary/Pradhan of the School Management Committee, Government Senior Secondary School, Soldha. It reveals that the petitioner had again been asked by the School Management Committee to resume her duties within two days, otherwise her services would be terminated.

21. It is an admitted fact of the parties that the services of the petitioner were engaged as a Mid Day Meal Worker. There is no denial of the fact that she had initially been engaged on 7.7.2008. It is not disputed that she had worked as such till 2.12.2009. The parties are not at variance that an industrial dispute thereafter had been raised by the petitioner and that reference was decided in her favour by this Court on 20.5.2013. Reference in this regard can be made to the copy of Award as Ex.PW1/C. It is an admitted fact on the part of the respondents that in compliance of the Award, the petitioner had been re-engaged. According to the petitioner she had again worked as a Mid Day Meal Worker with the respondents till 7.10.2013 and on 8.10.2013 her services had been illegally terminated by the respondents. It was the stand taken by the respondents that as the petitioner had remained absent from duty beyond three days without any approval from the member secretary/competent authority, her services stood terminated by the School Management Committee on 19.10.2013, as per the guidelines (norms) for engaging Cook-cum-Helper under Mid Day Meal Scheme.

22. Section 10 (4) of the Act mandates that the Labour Court/Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. As per the reference received from the appropriate Government, this Court is required to decide:—

(i) Whether the final termination of the services of the petitioner by the respondents on 8.10.2013 is legal and justified?

23. Although, looking to the statement of claim and the sworn testimony of the petitioner, it appears that she has claimed that her services had been finally terminated by the respondents on 8th October, 2013 but, however, placed on record by the respondents are photocopies of letters/notices issued to the petitioner as Mark-A to Mark-D. These letters/notices go to show that on 9th, 11th and 14th October, 2013, the petitioner had been asked by respondent no.2 to resume her duties, lest proceedings of indiscipline would be initiated against her and her services could also be terminated. Meaning thereby that the services of the petitioner had not been terminated by the respondents on 8.10.2013. At this stage, I will like to highlight that there are certain unmarked/un-exhibited documents on record. Copy of resolution passed by the School Management Committee, Soldha on 19.10.2013 shows that when despite notice being issued, the petitioner had failed to report back on duty and had also not sent any information in writing, the committee had resolved to terminate the services of the petitioner. Notice of termination of services of the even date was also sent to the petitioner and a copy of thereof had also been addressed to Deputy Director, Elementary Education Bilaspur. In view of the aforesaid documents, the question of final termination of the services of the petitioner by the respondents (as per the reference on 8.10.2013) does not arise. Rather, the same has become insignificant, as the final termination per these documents had taken place on 19.10.2013.

24. Even otherwise, there is no denial of the fact that the Government has framed guidelines for hiring of services of Cook-cum-Helper under Mid Day Meal Scheme by the School Management Committee in Himachal Pradesh. Copy thereof has been placed on record by the respondents as Mark-RA. Rule 19 (b) reads thus:-

“Continuous absence beyond three days from the school without approval of member secretary/competent authority shall automatically lead to the termination of the services of the Cook-cum-Helper. The Cook-cum-Helper will not be entitled for any wages/remuneration for the period of absence”.

25. Admittedly, FIR no.170/2013 dated 4.2.2013 stood registered at Police Station Barmana against the petitioner. It stands categorically admitted in her substantive evidence by the petitioner that she had remained in custody for about 26-27 days. Except for the application Mark-PA for grant of two days leave for 7th and 8th October, 2013, nothing has been brought on record by the petitioner to show that thereafter till 19th October, 2013 she had sought the approval of member secretary/competent authority for her continuous absence from the school. Admittedly, the services of the petitioner were retrenched by the School Management Committee Soldha under the above noted rule per resolution dated 19.10.2013, copy of which is there on the file. The retrenchment notice reveals that despite being asked time and again in writing, when the petitioner had neither reported back on duty, nor had given anything in writing, the School Management Committee had resolved to discharge the services of the petitioner w.e.f. 19.10.2013 for her continuous absence from school, as per Rule 19 of the guidelines for hiring of services of Cook-cum-Helper under Mid Day Meal Scheme.

26. Since, the petitioner remained continuously absent beyond three days from school, as she categorically admitted in her substantive evidence that she had remained in custody for about 26-27 days; and as there is nothing on record to show that she had sought any approval of the member secretary/competent authority for this period of absence of her's, it cannot be said that her services were wrongly and illegally terminated by the respondents. Ex.PW1/B, the copy of judgment rendered by the learned Special Judge, Bilaspur in Sessions Trial No.19/7 of 2013 titled as State of Himachal Pradesh vs. Sanjeev Kumar & Anr. decided on 4.8.2016, though shows that the petitioner (accused no.2 in that case) was acquitted, but in the absence of any approval of the member secretary/competent authority for her continuous absence beyond three days from the school, the petitioner cannot derive any advantage from this document to prove her case.

27. In view of the discussion and findings arrived at by me above, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

28. Taking into account my findings on issues no. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue and that the instant claim petition is not maintainable in the present form.

29. This issue is also decided against the petitioner and in favour of the respondents.

Relief:

30. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no

order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	: 24/2019
Date of Institution	: 20.3.2019
Date of Decision	: 23.9.2019

Shri Onkar Singh s/o Shri Labhu Ram, r/o Village Barai, P.O. Sunehar, Tehsil Nagrota Bagwan, District Kangra, H.P.*Petitioner.*

Versus

M/s Divya Himachal Prakashan Pvt. Ltd. & Samarpan Printers Old Matour, Pathankot-Kangra Marg, Tehsil & District Kangra, H.P.*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Ravinder Aggarwal, AR.
For the Respondent(s)	: Sh. N.L. Kaundal, AR
	: Sh. Vijay Kaundal, Adv.
	: Sh. Rajat Chaudhary, Adv.

The reference given below has been received from the appropriate Government for adjudication:—

1. Whether applicant/claimant is entitled to the amount of Rs.32,10,124/- as claimed by him from the management above named under the Majithia Wage Board?"
2. Whether applicant/claimant is entitled to the amount of Rs.32,10,124/- as claimed by him from the management above named under the Majithia Wage Board?"
2. The case is listed for filing of rejoinders to the replies and settlement of issues but, however, Shri Ravinder Aggarwal, Authorized Representative for the petitioner has made the below given statement in the Court today:—

"Stated that I do not want to proceed with this reference (Ref. No.24/19) due to some technical ground and withdraw the same on behalf of the petitioner with liberty to file a fresh case before appropriate authority".

3. In view of the above statement, this reference/claim petition is dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

6. File after due completion be consigned to the records.

Announced in the open Court today this 23 rd day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	: 25/2019
Date of Institution	: 20.3.2019
Date of Decision	: 23.9.2019

Shri Lekh Raj s/o Shri Roshan Lal, r/o V.P.O. Dadh, Tehsil Palamur, District Kangra, H.P.
..Petitioner.

Versus

M/s Divya Himachal Prakashan Pvt. Ltd. & Samarpan Printers Old Matour, Pathankot-Kangra Marg, Tehsil & District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Ravinder Aggarwal, AR.
For the Respondent(s)	: Sh. N.L. Kaundal, AR
	: Sh. Vijay Kaundal, Adv.
	: Sh. Rajat Chaudhary, Adv.

AWARD/ORDER

The reference given below has been received from the appropriate Government for adjudication:—

1. Whether applicant/claimant had opted for para 20 (j) of the Majithia Wage Board as claimed/alleged by the management of M/s Divya Himachal Prakashan Pvt. Ltd.?" If No.

2. Whether applicant/claimant is entitled to the amount of Rs. 22,03,147/- as claimed by him from the management above named under the Majithia Wage Board?"

2. The case is listed for filing of rejoinder and settlement of issues but, however, Shri Ravinder Aggarwal, Authorized Representative for the petitioner has made the below given statement in the Court today:—

“Stated that I do not want to proceed with this reference (Ref. No.25/19) due to some technical ground and withdraw the same on behalf of the petitioner with liberty to file a fresh case before appropriate authority”.

3. In view of the above statement, this reference/claim petition is dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

6. File after due completion be consigned to the records.

Announced in the open Court today this 23rd day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	: 714/2016
Date of Institution	: 03.10.2016
Date of Decision	: 23.9.2019

Shri Rajiv Goswami s/o Shri Des Raj Goswami, r/o Village Sukead, P.O. Nalsuha, Tehsil Dehra, District Kangra, H.P.Petitioner.

Versus

1. The Managing Director, M/S Jagran Prakashan, Jagran Building, Sarvodayanagar, Kanpur, U.P.

2. The Chief Executive Officer, M/S Jagran Prakashan Limited, Plot No.210, Sector-63, Noida, U.P.

3. The General Manager, M/S Jagran Prakashan Limited, Village Banoi, P.O. Bandi, Tehsil Shahpur, District Kangra, H.P.Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Petitioner in person with Sh. Umesh Nath Dhiman, Adv.

For the Respondent(s): Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 : Sh. Rajat Chaudhary, Adv.

AWARD/ORDER

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of services Shri Rajiv Goswami s/o Shri Des Raj Goswami, r/o Village Sukead, P.O. Nalsuha, Tehsil Dehra, District Kangra, H.P. during February, 2016 by (i) the Managing Director, M/S Jagran Prakashan, Jagran Building, Sarvodayanagar, Kanpur, U.P., (ii) the Chief Executive Officer, M/S Jagran Prakashan Limited, Plot No.210, Sector -63, Noida, U.P., (iii) the General Manager, M/S Jagran Prakashan Limited, Village Banoi, P.O. Bandi, Tehsil Shahpur, District Kangra, H.P. who has worked with the above employer as Working Journalist, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief including reinstatement, amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers/Management?”

“Whether the action of the employers *i.e.* (i) the Managing Director, M/S Jagran Prakashan, Jagran Building, Sarvodayanagar, Kanpur, U.P. (ii) the Chief Executive Officer, M/S Jagran Prakashan Limited, Plot No.210, Sector -63, Noida, U.P. (iii) the General Manager, M/S Jagran Prakashan Limited, Village Banoi, P.O. Bandi, Tehsil Shahpur, District Kangra, H.P. not to pay arrear of wages amounting to Rs.47,27,262/- to Shri Rajiv Goswami S/O Shri Des Raj Goswami, R/O Village Sukead, P.O. Nalsuha, Tehsil Dehra, District Kangra, H.P. as difference of wages actually drawn and due as per recommendations of the Majithia Wage Boards (copy of claim enclosed) constituted under Section 9 & 13 (C) of the Working Journalist and Other News Paper Employees (Conditions of Services) and Miscellaneous Provisions Act, 1955 is legal and justified? If not, what amount of relief/arrear, alongwith interest the aggrieved workman is entitled to from the above employers/Management?”

2. The case is listed for arguments on application under Section 13-A Sub Section (1) read with Section 13 D of the Working and News Papers Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 but, however, Shri Rajiv Goswami (petitioner) has made the below given statement in the Court today:—

“Stated that I do not want to proceed with this reference (Ref. No.714/16) due to some technical ground and withdraw the same with liberty to file a fresh case before appropriate authority”.

3. In view of the above statement, this reference/claim petition is dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

6. File after due completion be consigned to the records.

Announced in the open Court today this 23rd day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	: 272/2016
Date of Institution	: 04.5.2016
Date of Decision	: 23.09.2019

Shri Vikas s/o late Shri Ved Prakash, r/o VPO Samirpur, Tehsil & District Kangra, H.P.
..Petitioner.

Versus

The Incharge, Regional Mountaineering Centre Mcleodganj, Tehsil Dharamshala,
 District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Madan Thakur, Adv.

For the Respondent: Sh. Gaurav Awasthi, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Vikas s/o Late Shri Ved Prakash, r/o V.P.O. Samirpur, Tehsil & District Kangra, H.P. during November, 2013 by the Incharge, Regional Mountaineering Centre Mcleodganj, Tehsil Dharamshala, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as a porter on daily waged basis by the respondent in the month of December, 2008. He had served the respondent sincerely and faithfully and had completed 240 days in each calendar year. But, his services were terminated by the respondent *w.e.f.* 1.12.2013 without serving any prior notice. Although, the petitioner had been engaged as a porter, but he was made to discharge

the duties of a clerk. He was provided wages on the lower side, that of the porter. There was violation of the principle of equal pay for equal work. The Regional Mountaineering Centre, Mcleodganj, Dharamshala is involved in the activities of adventure sports, mountaineering and trekking etc., which are of permanent nature. The services of the petitioner would always be required by the respondent to carry out the aforementioned activities. However, the respondent by acting contrary to the factual position had terminated his services. After oral termination of the services of the petitioner, he had approached the respondent many a times to re-engage him, but without success. The respondent had not followed the principle of 'last come first go' as persons junior to him were retained. New/fresh hands have also been engaged by the respondent in the same capacity of a porter. The respondent has violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The petitioner is unemployed. The act of the respondent is claimed to be illegal, arbitrary, unconstitutional and unjustified as well as contrary to the provisions of law and the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, estoppel, cause of action and suppression of material facts. The contents of the petition were denied on merits. However, it was admitted that the petitioner was engaged as a porter. It is denied that he was engaged in the month of December, 2008. It was claimed that he had been engaged on 1.5.2011. The petitioner had not completed 240 days in any calendar year. Since, the petitioner had been engaged as a porter on daily wages, there was no question of his performing the duties of a clerk. The respondent had never terminated the services of the petitioner. He himself had left the office/premises of the Mountaineering Centre without any rhyme or reason. He had never visited the office of the respondent for his re-engagement. He had been pressurizing the respondent to appoint him as a permanent employee. It is admitted that Regional Mountaineering Centre Mcleodgang, Dharamshala is involved in adventure sports, mountaineering and trekking activities. However, it is asserted that all these activities are not permanent, rather they are demand based. Fresh appointees are being engaged by the respondent as per the demand and the requirement of time, after the leaving of job by the petitioner without intimation. The respondent has not violated any of the provisions of the Act. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 26.5.2018:—

1. Whether termination of services of the claimant/petitioner by the respondent during November, 2013 is/was illegal and unjustified as alleged? ...OPP.
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? .. OPP.
3. Whether the claim petition is not maintainable in the present form? .. OPR.
4. Whether the petitioner has suppressed and concealed the true and material facts from the Court as alleged? .. OPR.
5. Whether the petitioner has no cause of action to file the present case as alleged? ..OPR.

Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Vikas appeared as PW1 and tendered in evidence

his statement by way of affidavit Ex. PW1/A, copy of demand notice as Ex.PW1/B, copy of reply to the demand notice as Ex.PW1/C and copy of certificate as Ex.PW1/D. Mrs. Anuja Awasthi (respondent) appeared as RW1 and tendered in evidence her statement by way of affidavit as Ex. RW1/A, copy of mandays chart of the workers as Ex.RW1/B and copy of muster rolls as Ex.RW1/C. By way of additional evidence, the respondent had tendered in evidence the muster roll of the petitioner for the year 2011 to 2013 as Ex.RX.

7. Arguments of the learned counsel for the parties heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1 : No

Issue No.2 : Negative

Issue No.3 : Yes

Issue No.4 : Not pressed

Issue No.5 : Yes

Relief : Petition is dismissed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Vikas (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he was appointed as a porter in the Mountaineering Centre. He denied that he was appointed by the respondent on 1.5.2011. He admitted that he had worked on daily waged basis. He further admitted that RMC organizes trekking adventurous schemes. It was also admitted by him that the work of trekking is on the basis of requirement and as per the demand. He also admitted that the duration of trekking tours is from 10 to 30 days. He further admitted that a new/fresh hand is appointed in RMC Dharamshala on demand basis. Further, he admitted that the appointments are not permanent. It was also admitted by him that he was not on permanent job. Volunteered that, he had been working continuously since long. He specifically denied that he had left the job of his own. He also denied that he had not completed 240 days in any year. He further denied that in the year 2011 he had worked only for 93 days in RMC Dharamshala. He denied that he is making a phoney statement.

11. Ex. PW1/B is the copy of demand notice dated 23.7.2014 relating to the petitioner.

12. Ex. PW1/C is the copy of reply to the demand notice dated 9th January, 2015.

13. Ex.PW1/D is the copy of certificate pertaining to the petitioner.

14. Conversely, Mrs. Anuja Awasthi, Incharge, Mountaineering Centre, Mcleodganj, Dharamshala (respondent) testified as RW1. In her affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, she corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, she denied that the petitioner had been engaged as a daily waged porter in December, 2008. Volunteered that, he was kept on 1.5.2011. She denied that the petitioner was made to work as a clerk. She admitted that Ex.PW1/D, which is on the letter head of Regional Mountaineering Centre, Mcleodganj, was issued to the petitioner. Self stated that such certificate is not in their record. The Deputy Director had retired on 31.5.2011.

He thereafter had worked as OSD in Regional Mountaineering Centre, Mcleodganj for about two years and had retired on 30.6.2013. Ex.PW1/D has been signed by the Deputy Director/OSD. She admitted that Ex.PW1/D reflects the petitioner to have worked since the year 2008. Self stated that it is not correct as per the record. It was also admitted by her that she was aware of Ex.PW1/D since October, 2016. She further admitted that no action had been taken against the OSD who had issued it. Volunteered that, higher authorities have been informed. At present she cannot produce any such intimation to the higher authorities. She specifically denied that no action has been taken against the OSD, as Ex.PW1/D is correct. She clearly admitted that as per Ex.RW1/B the petitioner had worked both as a porter and a clerk. She denied that the petitioner was made to work as a clerk, but was paid the wages of a porter. She also denied that the posts of porter and clerk are of permanent nature. It was also denied by her that the services of the petitioner were required throughout. She specifically denied that the services of the petitioner had been terminated on 1.12.2013. She admitted that no compensation had been paid. She also admitted that after the year 2013, from time to time new porters had been kept, self stated that casual workers were kept. She denied that the petitioner had approached her many a times for re- engagement, but she had refused to keep him.

15. Ex. RW1/B is the copy of detail of working days relating to the petitioner.

16. Ex. RW1/C is the copy of muster roll for the month of May, 2011 relating to the petitioner and others.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged porter. Copy of details of working days Ex.RW1/B was produced by the respondent. Its perusal discloses that the services of the petitioner were initially engaged in the month of May, 2011 by the respondent. However, the petitioner claimed that he had been engaged as a daily waged porter by the respondent in December, 2008. To buttress his such case, he has placed on record copy of certificate issued by the OSD, Regional Mountaineering Centre, Mcleodganj, Dharamshala, H.P. as Ex.PW1/D. It reveals that the petitioner had been working in the centre since the year 2008. Although, it was claimed by the respondent that this certificate is not factually correct but, however, Mrs. Anuja Awasthi (RW1) was categorical while under cross-examination that she was in the know of Ex.PW1/D, which bears the signatures of Deputy Director/OSD, since October, 2016. She also clearly admitted that no action had ever been taken against the OSD who had issued the same. Though, she claimed that the higher authorities had been informed, but no such document has seen the light of the day. Since, it is not disputed by the respondent that the certificate Ex.PW1/D is on the letter head of the Regional Mountaineering Centre, Mcleodganj, and it bears the signatures of the then OSD of the Centre, and as it was not challenged since October, 2016, nor any action had been taken against the OSD concerned, it can be safely be inferred that its contents were accepted to be correct by the respondent.

18. Now the point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that his services had orally been terminated by the respondent, whereas the stand taken by the respondent is that the petitioner himself had left the job.

19. It is well known that abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Mrs. Anuja Awasthi (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

20. Now comes the question as to whether in the month of November, 2013, the services of the petitioner were finally terminated by the respondent or not?

21. As per the reference received from the appropriate Government, the services of the petitioner stood finally terminated during November, 2013. Placed on record by the petitioner is the copy of demand notice as Ex.PW1/B. It also discloses that the petitioner had been disengaged by the respondent in the month of November, 2013. Section 10 (4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding the alleged final termination of the services of the petitioner by the respondent on 1st December, 2013. However, looking to the statement of claim and the sworn testimony of the petitioner, it is apparent that he has claimed that his services had been finally terminated by the respondent on 1.12.2013. Such pleadings and evidence of the petitioner cannot be looked into by this Court, being beyond the terms of the reference. Then, as per the mandays chart Ex.RW1/B (also Ex.RX), the petitioner is shown to have worked for a period of 30 days in the month of November, 2013. Since, it has not been pleaded nor stated by the petitioner that his services stood terminated by the respondent in the month of November, 2013, therefore, the question of final termination of his services by the respondent (as per the reference) does not arise. Rather, the same has become insignificant.

22. For the discussion and findings arrived at by me above, the allegations of the petitioner that the principle of 'last come first go' had not been adhered to and that new/fresh hands were appointed by the respondent after his termination pale into insignificance.

23. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issues No. 3 and 5:

24. Taking in to account my findings on issues no. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. These issues are decided in favour of the respondent and against the petitioner.

Issues No. 4:

25. Not pressed.

Relief:

26. In the light of what has been discussed hereinabove while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	: 16/2018
Date of Institution	: 28.3.2018
Date of Decision	: 23.09.2019

Shri Dharam Chand s/o Shri Kikar Singh, r/o Village Dev Bharari, P.O. Sulyali, Tehsil Nurpur, District Kangra, H.P.*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P.*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.
 For the Respondent : Sh. B.C. Katoch, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Dharam Chand s/o Shri Kikar Singh, r/o Village Dev Bharari, P.O. Sulyali, Tehsil Nurpur, District Kangra, H.P. during October, 1988 by the Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after nearly 23 years *vide* demand notice dated 23.07.2011, without complying the provisions

of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of nearly 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner as it emerges from the statement of claim is that he was initially engaged as a beldar on daily waged basis in May, 1986 in HPPWD Division Jassur (Nurpur), H.P. (now HPPWD Jawali) on various construction sites, like Bodh to Chaki Dhar Road, Suliali to Dev Bhrari etc. However, his services were disengaged w.e.f. June, 1990 in violation of the law. The petitioner had completed 240 days in each calendar year. The respondent under a mistaken notion and ignorance of law had terminated the services of the petitioner in June, 1990. He thereafter had made oral requests to the respondent and his subordinates to re-engage him. Although, he was assured to be re-engaged after three or four months, but nothing was heard thereafter from the department. A letter in writing had also been sent by him to the department for his re-engagement on daily waged basis, but without success. Smt. Kusum Lata, junior to him was retained by the department and she at present is working in HPPWD Division Nurpur. Twenty four other juniors were also re-appointed by the department in the year 2010, as per the directions of the Hon'ble High Court. The principle of 'last come first go' was not adhered to by the respondent. No one month's notice, nor any retrenchment compensation had been paid to the petitioner. The provisions of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been violated by the respondent. New/fresh hands had also been engaged and no opportunity was ever given to the petitioner for his re-engagement, thereby, violated the provisions of Section 25-H of the Act. The petitioner is not gainfully employed since the time of his illegal and unjustified termination by the respondent. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. However, it was admitted by the respondent that the petitioner had been engaged as a daily wager in the year 1986. It was specifically denied that he had been disengaged in June, 1990. It was asserted that the petitioner worked intermittently w.e.f. February, 1987 to October, 1988 and thereafter had left the job of his own sweet will. It is denied that the petitioner had completed 240 days in each calendar year. It is claimed that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* HP Government Notification no. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is admitted that HPPWD Division Jawali is involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Neither any junior had been retained nor engaged by the respondent, so there was no violation of any of the provisions of the Act. It is denied that a pick and choose policy had been adopted by the respondent. The persons mentioned at serial no.1 to 24 were engaged as per the directions of the Court. After leaving the work the petitioner had never approached the respondent and had raised the demand notice only in the year 2011. Only those workers had been regularized who had worked continuously and fulfilled the requisite criteria of regularization as per the Government policy. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 02.11.2018:—

1. Whether termination of the service of petitioner by the respondent during October, 1988 is/was legal and justified as alleged? ..OPP.

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? .. *OPP.*

3. Whether the claim petition is not maintainable in the present form as alleged? .. *OPR.*

4. Whether the claim petition is bad on account of delay and laches as alleged? .. *OPR.*

Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Dharam Chand examined himself as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. Shri Jagtar Singh Thakur (respondent) appeared as RW1 and tendered his statement by way of affidavit Ex. RW1/A. He also placed on the file copy of mandays chart of the petitioner as Ex.RW1/B, copy of notification dated 21.7.1994 as Ex.RW1/C and copy of letter dated 18.8.1994 as Ex.RW1/D.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Yes
Issue No.2	: Negative
Issue No.3	: Yes
Issue No.4	: No
Relief	: Claim petition dismissed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Dharam Chand examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He also admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification no.PBW-(A)-A(1)17/94. He denied that he had never worked in Jawali Division. He also denied that he had worked intermittently *w.e.f.* February, 1987 upto October, 1988 in the department. He further denied that he had left the work of his own. Volunteered that, from May, 1986 upto June, 1990 he had worked continuously. He specifically denied that he had never worked in the department continuously, nor he had ever been given breaks by the

department. He feigned ignorance that the workers mentioned in the petition and the affidavit were kept at work in HPPWD Division Nurpur as per the orders of the Court. He specifically denied that the respondent had adhered to the principle of 'last come first go'. He also denied that he had never worked for 240 days and above in any year. He further denied that only those workers had been regularized who had fulfilled the conditions of the policy of the Government for regularization. He admitted that he owns land, which he cultivates. He also admitted that he is doing the days' drudgery privately. Self stated that, as and when the work is available. He denied that he is making a phoney statement.

12. Conversely, Shri Jagtar Singh Thakur, Executive Engineer, HPPWD, Division Jawali (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

13. In the cross-examination, he denied that the petitioner had worked from May, 1986 till June, 1990 regularly and had completed 240 days. Volunteered that, as per their record, the petitioner had only worked for 289½ days. He denied that the petitioner had been removed without any notice and that junior beldars/workers were retained. He admitted that no notice had been given to the petitioner to report for work. Self stated that he had left the job of his own. He further admitted that Ex.RW1/D contains the names of only those persons, who have been working in the department since the year 1994. Further, he denied that the petitioner had been given the assurance by the department that as and when the work would be available, he would be called. Further, he denied that intentionally incomplete muster rolls and other record pertaining to the petitioner had been filed.

14. Ex.RW1/B is the copy of the mandays chart relating to the petitioner.

15. Ex. RW1/C is the copy of notification dated 21st July, 1994 with regard to the shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

16. Ex. RW1/D is the copy of Office Order dated 18.8.1994 regarding the transfer of work-charged staff to HPPWD Division Nurpur, on the closure of HPPWD Jassur and its opening at Jawali.

17. It is an admitted fact of the parties that the services of the petitioner were engaged as a daily waged beldar. Although, the petitioner claimed that he had worked as a beldar from May, 1986 until June, 1990 but, however, the respondent has produced on record the mandays chart of the petitioner, copy of which is Ex.RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of February, 1987 for the first time as a daily waged beldar and he had worked as such until October, 1988. The claimant/petitioner has not placed and exhibited on record any document to show that he had regularly worked with the respondent from May, 1986 until June, 1990.

18. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that his services had orally been terminated by the respondent, whereas the stand taken by the respondent is that after October, 1988 the petitioner had left the work of his own.

19. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Jagtar Singh Thakur, (RW1) alleging that the workman ha

abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, 'animus' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such 'animus' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

20. As per the reference received from the appropriate Government, the services of the petitioner stood finally terminated during October, 1988. Section 10 (4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding the alleged final termination of the services of the petitioner by the respondent in June, 1990. However, looking to the statement of claim and the sworn testimony of the petitioner, it is apparent that he has claimed that his services had been finally terminated by the respondent in the month of June, 1990. Such pleadings and evidence of the petitioner cannot be looked into by this Court, being beyond the terms of the reference. Since, it has not been pleaded nor stated by the petitioner that his services stood terminated by the respondent in October, 1988, therefore, the question of final termination of his services by the respondent (as per the reference) does not arise. Rather, the same has become insignificant.

21. Even otherwise, Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

22. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. Although, in his chief-examination the petitioner claimed that he had worked with the respondent as a beldar continuously from May, 1986 until June, 1990, but no mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. It has been laid down by the Hon'ble Supreme Court in case titled as Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138 that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

23. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondent. A detail of such persons has been given in para 8 of the statement of claim. The respondent had refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the department. Significantly, no seniority list has been placed and exhibited on record or any other witness examined so as to show that the persons named in the statement of claim and in his

affidavit by the petitioner were junior to him and who had been retained by the respondent at the time of the termination of his services. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondent during the pendency of this case. Therefore, it cannot be said that the respondent had violated the principle of 'last come first go', as envisaged in Section 25-G of the Act.

24. It was also claimed by the petitioner that new appointments had been made by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

25. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

26. Taking into account my findings on issues no. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue and that the instant claim petition is not maintainable in the present form.

27. This issue is decided against the petitioner and in favour of the respondent.

Issue No. 4:

28. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*, it has been observed by the Hon'ble Supreme Court that:—

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

29. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

30. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	: 07/2018
Date of Institution	: 28.3.2018
Date of Decision	: 23.09.2019

Shri Bir Singh s/o Shri Kishan Chand, r/o Village Dev Bharari, P.O. Sulyali, Tehsil Nurpur, District Kangra, H.P. ..*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. Pankaj Bhardwaj, Adv.
For the Respondent	: Sh. B.C. Katoch, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Bir Singh s/o Shri Kishan Chand, r/o Village Dev Bharari, P.O. Sulyali, Tehsil Nurpur, District Kangra, H.P. during November, 1988 by the Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after 23 years vide demand notice dated 23.07.2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was initially engaged as a beldar on daily waged basis in May, 1986 in HPPWD Division Jassur (Nurpur), H.P. (now HPPWD Jawali) on various construction sites, like Bodh to Chaki Dhar Road, Suliali to Dev Bharari etc. However, his services were disengaged w.e.f. June, 1990 in violation of the law. The petitioner had completed 240 days in each calendar year. The respondent under a mistaken notion and ignorance of law had terminated the services of the petitioner in June, 1990. He thereafter had made oral requests to the respondent and his subordinates to re-engage him. Although, he was assured to be re-engaged after three or four months, but nothing was heard thereafter from the department. A letter in writing had also been sent by him to the department for his re-engagement on daily waged basis, but without success. Smt. Kusum Lata, junior to him was retained by the department and she at present is working in HPPWD Division Nurpur. Twenty four other juniors were also re-appointed by the department in the year 2010, as per the directions of the Hon’ble High Court. The principle of ‘last come first go’ was not adhered to by the respondent. No one month’s notice, nor any retrenchment compensation had been paid to the petitioner. The provisions of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been violated by the respondent. New/fresh hands had also been engaged and no opportunity was ever given to the petitioner for his

re-engagement, thereby, violated the provisions of Section 25-H of the Act. The petitioner is not gainfully employed since the time of his illegal and unjustified termination by the respondent. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. However, it was admitted by the respondent that the petitioner had been engaged as a daily wager in the year 1986. It was specifically denied that he had been disengaged in June, 1990. It was asserted that the petitioner worked intermittently *w.e.f.* January, 1987 to November, 1988 and thereafter had left the job of his own sweet will. It is denied that the petitioner had completed 240 days in each calendar year. It is claimed that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* HP Government Notification no. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is admitted that HPPWD Division Jawali is involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Neither any junior had been retained nor engaged by the respondent, so there was no violation of any of the provisions of the Act. It is denied that a pick and choose policy had been adopted by the respondent. The persons mentioned at serial no.1 to 24 were engaged as per the directions of the Court. After leaving the work the petitioner had never approached the respondent and had raised the demand notice only in the year 2011. Only those workers had been regularized who had worked continuously and fulfilled the requisite criteria of regularization as per the Government policy. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 02.11.2018:—

1. Whether termination of the service of petitioner by the respondent during November, 1988 is/was legal and justified as alleged? ..OPP.
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Bir Singh examined himself as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. Shri Jagtar Singh Thakur (respondent) appeared as RW1 and tendered his statement by way of affidavit Ex. RW1/A. He also placed on the file copy of mandays chart of the petitioner as Ex.RW1/B, copy of notification dated 21.7.1994 as Ex.RW1/C and copy of letter dated 18.8.1994 as Ex.RW1/D.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Yes
Issue No.2	: Negative
Issue No.3	: Yes
Issue No.4	: No
Relief	: Claim petition dismissed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Bir Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He also admitted that HPPWD Division Jawali was established on 21st July, 1994 vide government notification no.PBW-(A)-A(1)17/94. He denied that he had never worked in Jawali Division. He also denied that he had worked intermittently w.e.f. January, 1986 until November, 1988 in the department. He further denied that he had left the work of his own. Volunteered that, from May, 1986 until June, 1990 he had worked continuously. He specifically denied that he had never worked in the department continuously, nor he had ever been given breaks by the department. He feigned ignorance that the workers mentioned in the petition and the affidavit were kept at work in HPPWD Division Nurpur as per the orders of the Court. He specifically denied that the respondent had adhered to the principle of 'last come first go'. He also denied that he had never worked for 240 days and above in any year. He further denied that only those workers had been regularized who had fulfilled the conditions of the policy of the Government for regularization. He admitted that he owns land, which he cultivates. He also admitted that he is doing the days' drudgery privately. Self stated that, as and when the work is available. He denied that he is making a phoney statement.

12. Conversely, Shri Jagtar Singh Thakur, Executive Engineer, HPPWD, Division Jawali (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

13. In the cross-examination, he denied that the petitioner had worked from May, 1986 till June, 1990 regularly and had completed 240 days. Volunteered that, as per their record, the petitioner had only worked for 582½ days. He denied that the petitioner had been removed without any notice and that junior beldars/workers were retained. He admitted that no notice had been given to the petitioner to report for work. Self stated that he had left the job of his own. He further admitted that Ex.RW1/D contains the names of only those persons, who have been working in the department since the year 1994. Further, he denied that the petitioner had been

given the assurance by the department that as and when the work would be available, he would be called. Further, he denied that intentionally incomplete muster rolls and other record pertaining to the petitioner had been filed.

14. Ex.RW1/B is the copy of the mandays chart relating to the petitioner.

15. Ex. RW1/C is the copy of notification dated 21stJuly, 1994 with regard to the shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

16. Ex. RW1/D is the copy of Office Order dated 18.8.1994 regarding the transfer of work-charged staff to HPPWD Division Nurpur, on the closure of HPPWD Jassur and its opening at Jawali.

17. It is an admitted fact of the parties that the services of the petitioner were engaged as a daily waged beldar. Although, the petitioner claimed that he had worked as a beldar from May, 1986 upto June, 1990 but, however, the respondent has produced on record the mandays chart of the petitioner, copy of which is Ex.RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of January, 1987 for the first time as a daily waged beldar and he had worked as such upto November, 1988. The claimant/petitioner has not placed and exhibited on record any document to show that he had regularly worked with the respondent from May, 1986 upto June, 1990.

18. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that his services had orally been terminated by the respondent, whereas the stand taken by the respondent is that after November, 1988 the petitioner had left the work of his own.

19. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Jagtar Singh Thakur, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

20. As per the reference received from the appropriate Government, the services of the petitioner stood finally terminated during November, 1988. Section 10 (4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding the alleged final termination of the services of the petitioner by the respondent in June, 1990. However, looking to the statement of claim and the sworn testimony of the petitioner, it is apparent that he has claimed that his services had been finally terminated by the respondent in the month of June, 1990. Such pleadings and evidence of the petitioner cannot be looked into by this Court, being beyond the terms of the reference. Since, it has not been pleaded nor stated by the petitioner that his services stood

terminated by the respondent in November, 1988, therefore, the question of final termination of his services by the respondent (as per the reference) does not arise. Rather, the same has become insignificant.

21. Even otherwise, Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

22. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. Although, in his chief-examination the petitioner claimed that he had worked with the respondent as a beldar continuously from May, 1986 until June, 1990, but no mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. It has been laid down by the Hon'ble Supreme Court in case titled as Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138 that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

23. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondent. A detail of such persons has been given in para 8 of the statement of claim. The respondent had refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the department. Significantly, no seniority list has been placed and exhibited on record or any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondent at the time of the termination of his services. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondent during the pendency of this case. Therefore, it cannot be said that the respondent had violated the principle of 'last come first go', as envisaged in Section 25-G of the Act.

24. It was also claimed by the petitioner that new appointments had been made by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

25. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

26. Taking into account my findings on issues no. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue and that the instant claim petition is not maintainable in the present form.

27. This issue is decided against the petitioner and in favour of the respondent.

Issue No. 4:

28. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*, it has been observed by the Hon'ble Supreme Court that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

29. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief:

30. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	: 200/2017
Date of Institution	: 10.10.2017
Date of decision	: 23.9.2018

Sh. Balvinder Singh s/o Shri Maghar Singh, r/o V.P.O. Chowari, Tehsil Bhatiyat, District Chamba, H.P.Petitioner.

Versus

Employer/Managing Director, M/s Sunshine Hydro Power Limited, Village Nali, P.O. Baneth, Tehsil Bhatiyat, District Chamba, H.P.Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Miss Kannu, Adv. Vice

For the Respondent : Respondent already *ex parte*

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Balvinder Singh s/o Shri Maghar Singh, r/o V.P.O. Chowari, Tehsil Bhatiyat, District Chamba, H.P. *w.e.f.* 31-08-2016 by the Employer/Managing Director, M/S Sunshine Hydro Power Limited, Village Nali, P.O. Baneth, Tehsil Bhatiyat, District Chamba, H.P., without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as a technician (electrical) at site i.e. Kalam Hydro Project at Vilalge Nail, P.O. Banet, Bhattiyat, District Chamba *w.e.f.* 1.7.2011 upto 30.8.2016 and had drawn salary of Rs. 7,700/- per month. He had performed the duties to the best of his ability and with sincerity and devotion. The project manager and the superiors were satisfied with his work. There was not complaint with regard to his work. He had continuously worked from 1.7.2011 upto 30.8.2016, but on 31.8.2016, the respondent had terminated his services vide a notice. However, neither any one months' prior notice of termination in writing, nor any inquiry was conducted against him. He had also not been paid any retrenchment compensation at the time of the termination of his services, which is in violation of the provisions of Section 25 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). Sufficient work was available in the project and the termination of the services of the petitioner was illegal and malafide. After the termination of the services of the petitioner, he had approached the respondent many a times, but without success. No appointment letter, identity card and wages slip were ever issued to the petitioner at the time of his initial appointment. EPF slips were also not provided to the petitioner for the last sixteen months. He is not gainfully employed anywhere from the date of his unlawful termination. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. The respondent despite being properly served had failed to put in appearance before this Court on 04.1.2019, hence was proceeded against *ex parte*.

4. Thereafter, the petitioner was directed to adduce *ex parte* evidence. He examined himself as PW1 and tendered in evidence his affidavit Ex.PW1/A, copy of failure report dated 13.6.2019 as Ex.PW1/B and copy of certificate dated 24.7.2015 as Ex.PW1/C.

5. PW1 Shri Balvinder Singh in his chief-examination reiterated the stand taken by him in his statement of claim.

6. The aforesaid evidence of the petitioner has remained unrebutted on record, as the respondent has not come forward to contest the statement of claim or to cross-examine the petitioner. It, thus, stands proved from the ocular evidence on record that the petitioner Shri Balvinder Singh was appointed by the respondent as a technician (electrical) on 01.7.2011 and he had worked as such upto 30.8.2016. Evidence also stands led to the effect that the services of the

petitioner had been terminated illegally by the respondent. The non appearance of the respondent is suggestive of the fact that he has nothing to say in the matter. The unrebutted evidence of the petitioner clearly establishes on record that the petitioner had worked for more than 240 days preceding twelve calendar months from the date of his termination. It is also apparent from the evidence that no notice had been issued to the petitioner prior to the termination of his services, nor any compensation had been paid to him. No inquiry had ever been conducted against the petitioner before terminating his services. As regards the salary, it stands clearly stated by the petitioner that at the time of his termination, he was drawing a salary of Rs.7,700/- per month.

7. No doubt, it has also been alleged that the principle of 'last come first go' had not been adhered to by the respondent, but neither any seniority list has seen the light of the day, nor in the ocular evidence there is a mention of the names of the persons junior to the workman, who had been retained in service, after his services had been terminated. So, it cannot be said that the respondent had violated the provisions of Section 25-G of the Act.

8. Oral evidence has also been led on record to the effect that the petitioner was not gainfully employed during his forced idleness. Therefore, this Court, in the absence of any rebuttal to it, has no option but to hold that after the disengagement/termination of the workman, he had remained unemployed. The unrebutted evidence of the petitioner on record clearly establishes the violation of Section 25-F of the Act by the respondent.

9. In view of the foregoing discussion and findings arrived at by me above, the termination of the services of the petitioner by the respondent on 30.9.2015 is hereby set aside and quashed. Since, the termination of the petitioner has been found to be illegal, he is entitled to reinstatement with continuity in service from the date of his illegal termination. As regards the back wages, the petitioner is held to be entitled to 50% back wages from the respondent from the date of his illegal termination till his reinstatement. Consequently, the petition is allowed to the extent above. There shall be no order as to costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	: 355/2016
Date of Institution	: 27.5.2016
Date of Decision	: 26.9.2019

Shri Jai Chand s/o Shri Adam Ram, r/o VPO Balag, District Mandi, H.P.Petitioner.

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Deepak Azad, Adv.
For the Respondent : Smt. Navina Rahi, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

"Whether time to time termination of the services of Shri Jai Chand s/o Shri Adam Ram r/o V.P.O. Balag, District Mandi, H.P. *w.e.f.* 21-11-1998 to year, 2010 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case is listed for appearance of the petitioner but, however, Shri Jai Chand (petitioner) has made the below given statement in the Court today:—

"व्यान किया कि मेरा प्रतिवादी के साथ समझौता हो गया है। अतः मैं यह *case* (Ref. No. 355/16) वापिस लेता हूँ। दाखिल दफ्तर किया जावे।**"

3. In view of the above statement, this reference/claim petition is dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of September, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

लोक निर्माण विभाग

अधिसूचना

शिमला—2, 27 जनवरी, 2021

सं0पी0बी0डब्ल्यू0 (बी0)एफ(5)29 / 2014.—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु नामतः गाव टीहरा, मौजा भलेठ,

तहसील सुजानपुर, जिला हमीरपुर, हिमाचल प्रदेश में सुजानपुर-चौरी- पटलांदर सड़क के निर्माण हेतु भूमि अर्जित करनी अपेक्षित है, अतएव एतदद्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है, उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. यह घोषणा, भूमि अर्जन, पुनर्वास और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता अधिकार अधिनियम, 2013 (2013 का 30) की धारा-19 के उपबन्धों के अधीन इससे सम्बन्धित सभी व्यक्तियों को सूचना हेतु की जाती है तथा उक्त अधिनियम की धारा-19 के अधीन भू-अर्जन समाहर्ता, (मण्डी क्षेत्र) मण्डी, जिला मण्डी, हिमाचल प्रदेश को उक्त भूमि के अर्जन करने के आदेश लेने का एतदद्वारा निदेश दिया जाता है।

3. भूमि रेखांक का निरीक्षण भू-अर्जन समाहर्ता, (मण्डी क्षेत्र) लोक निर्माण विभाग, जिला मण्डी, (हि0 प्र0) के समक्ष अपनी आपत्ति दायर कर सकता है।

विवरणी

जिला	तहसील	गांव	खसरा नं0	रक्वा (कनाल-मरला में)
हमीरपुर	सुजानपुर	टीहरा	889 / 868 / 1	3-0
			किता 01	3-0

आदेश द्वारा,
हस्ताक्षरित / –
प्रधान सचिव (लोक निर्माण)।
